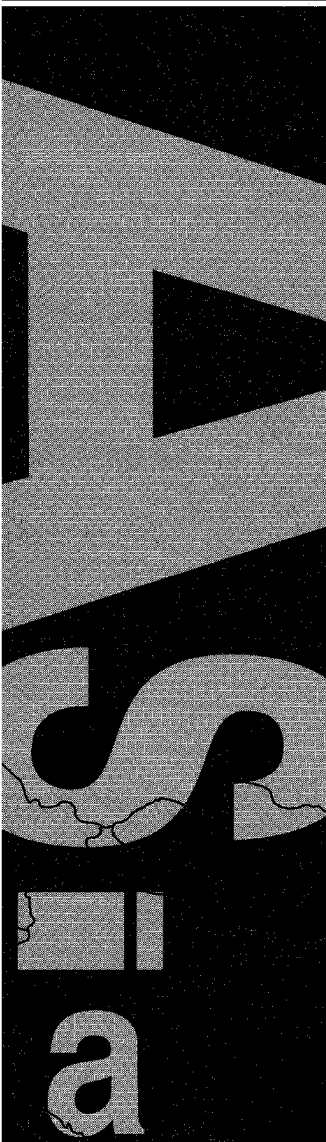


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UNITED STATES AND TERRITORIAL
DISPUTES IN THE SOUTH CHINA SEA:
A STUDY OF OCEAN LAW AND
POLITICS

Yann-huei SONG

SCHOOL OF LAW
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**UNITED STATES AND TERRITORIAL DISPUTES IN
THE SOUTH CHINA SEA: A STUDY OF
OCEAN LAW AND POLITICS***

Yann-huei SONG**

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** Ph.D., Kent State University; J.S.D., University of California School of Law (Boalt Hall), Berkeley. Dr. Song is a Research Fellow at the Institute of European and American Studies, Academia Sinica, Taipei, Taiwan, R.O.C. He is also an adjunct professor at the National Taiwan Ocean University and Soochow University.

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List of Abbreviations

<i>ABM</i>	Anti-Ballistic Missile
<i>AMM</i>	ASEAN Ministerial Meeting
<i>APEC</i>	Asia-Pacific Economic Cooperation
<i>ARF</i>	ASEAN Regional Forum
<i>ARF-SOM</i>	Meeting of Senior Officials for the ARF
<i>ASEAN</i>	Association of Southeast Asian Nations
<i>CARAT</i>	Cooperation Afloat Readiness and Training Military Exercises
<i>CBMs</i>	Confidence Building Measures
<i>CCOP</i>	Committee for Coordination of Jointly Prospecting the Mineral Resources in Asian Offshore Areas
<i>CIDA</i>	Canadian International Development Agency
<i>CNOOC</i>	China National Offshore Oil Cooperation
<i>COCSCS</i>	Code of Conduct in the South China Sea
<i>CPC</i>	Community Party of China
<i>CSBMs</i>	Confidence and Security Building Measures
<i>CSCAP</i>	Council for Security Cooperation in the Asia-Pacific
<i>CSIS</i>	Center for Strategic and International Studies
<i>CVC</i>	Communist Party of Vietnam
<i>EEZ</i>	Exclusive Economic Zone
<i>ELINT</i>	Electronic-intelligence-gathering
<i>ETM</i>	Education and Training of Mariners
<i>FON</i>	Freedom of Navigation
<i>FPDA</i>	Five Power Defense Arrangement
<i>FTA</i>	Free Trade Area
<i>GDP</i>	Gross Domestic Product
<i>GEM</i>	Group of Expert Meeting
<i>HDI</i>	Hydrographic Data and Information Exchange
<i>ISG</i>	Intersessional Support Group
<i>LM</i>	Legal Matters
<i>LOSC</i>	1982 United Nations Convention on the Law of the Sea
<i>MAA</i>	Military Assistance Agreement
<i>MBA</i>	Military Bases Agreement
<i>MEP</i>	Marine Environmental Protection
<i>MMCA</i>	Military Maritime Consultative Agreement
<i>MOA</i>	Memorandum of Agreement
<i>MSDF</i>	Maritime Self-Defense Forces
<i>MSR</i>	Marine Scientific Research
<i>MTD</i>	Mutual Defense Agreement
<i>NEACD</i>	Northeast Asia Cooperation Dialogue
<i>NL/NHR</i>	Non-living and Non-hydrocarbon Resources
<i>NMD</i>	National Missile Defense
<i>PLA</i>	People's Liberation Army
<i>PMC</i>	Post-Ministerial Conference
<i>PNTR</i>	Permanent Normalized Trade Relations
<i>RA</i>	Resources Assessment
<i>SAR</i>	Search and Rescue
<i>SCO</i>	Shanghai Cooperation Organization
<i>SCS</i>	South China Sea
<i>SCS Workshop</i>	Informal Workshop on Managing Potential Conflicts in the South China Sea
<i>SDF</i>	Self-Defense Forces
<i>SEANWFE</i>	Southeast Asia Nuclear Weapon-free Zone Treaty
<i>SGZC</i>	Study Group on Zones of Cooperation
<i>SGM</i>	Study Group Meeting
<i>SLOCs</i>	Sea Lines of Communications
<i>SNSC</i>	Safety of Navigation, Shipping and Communications
<i>SOM</i>	Senior Officials Meeting
<i>TAC</i>	Treaty of Amity and Cooperation in Southeast Asia
<i>TMD</i>	Theater Missile Defense
<i>TWGM</i>	Technical Working Group Meeting
<i>UNCLOS III</i>	Third United Nations Conference on the Law of the Sea, 1973-1982
<i>VFA</i>	Visiting Force Agreement
<i>ZOPFAN</i>	Zone of Peace, Freedom and Neutrality

INTRODUCTION

Issues involving competing sovereignty claims, legitimacy, and territorial disputes have always been a main source of regional and international tension. In the Asia-Pacific region, at least twenty-nine disputes of this nature, which are likely to lead to inter-state conflict, can be listed.¹ However, it is believed that the dispute concerning sovereignty over the Spratly Islands and maritime jurisdiction in the South China Sea (SCS, see Map 1) is one of the most important security issues, having the potential to affect peace and security in the Asia-Pacific region in the post-Cold War era.² One commentator has gone as far as to argue that the Spratly Islands constitute "the most contested place on the planet."³

Mainly in response to the serious disputes between China and the Philippines over the discovery that China had built octagonal structures on Mischief Reef⁴ of the Spratly archipelago in February 1995, members of the U.S. Congress introduced resolutions in March 1995, expressing the sense of the House of Representatives and the Senate that the United States should support peace and stability in the SCS.⁵ On May 10, 1995, the U.S. Department of

1. For the listed 29 conflicts, see Desmond Ball, "Arms and Affluence: Military Acquisitions in the Asia-Pacific Region," *International Security*, Vol. 18, No. 3 (Winter 1993/94), pp. 88-89.

2. See Desmond Ball, *ibid.*, p. 88; Michael G. Gallagher, "China's Illusory Threat to the South China Sea," *International Security*, Vol. 19, No. 1, 1994, p. 169; Trevor Findlay, "South-East Asia and the New Asia-Pacific Security Dialogue," *SIPRI Yearbook* (Oxford: Oxford University Press, 1994), p. 133; and Robert Karniol, "Balancing Act for the Far East Nations," *Janes World of Defense*, 1995, p. 61; Ian Townsend-Gault, "Breaking the Impasse in the South China Sea," *The Straits Time* (Singapore), November 20, 1998; and Ralph A. Cossa, "Security Implications of Conflict in the South China Sea: Exploring Potential Triggers of Conflict," *CSIS PacNet Newsletter* #16, April 17, 1998.

3. Daniel J. Dzurek, *The Spratly Islands Dispute: Who's on First? Maritime Briefing*, Vol. 2, No. 1 (Durham: International Boundaries Research Unit, University of Durham, 1996), p. 1.

4. The reef's Chinese name is Meiji Jiao; the Filipino name is Panganiban; and the Vietnamese calls it Vanh Khan.

5. The House of Representatives introduced *H.Res. 114* on March 10, 1995. *S.Res. 97* was introduced in the Senate on March 30, 1995. For the text of *H.Res. 114* (Expressing the sense of the House of Representatives that the United States should support peace and stability in the South China Sea) and *S.Res. 97* (Expressing the sense of the Senate with respect to peace and stability in the South China Sea), visit THOMAS — the World Wide Web on line system, established by the Library of Congress of the

State issued a strong and comprehensive statement of official policy on the Spratlys and the SCS, declaring, *inter alia*, that

The United States takes no position on the legal merits of the competing claims to sovereignty over the various islands, reefs, atolls and cays in the South China Sea. The United States would, however, view with serious concern any maritime claim, or restriction on maritime activity, in the South China Sea that was not consistent with international law, including the 1982 United Nations Convention on the Law of the Sea.⁶

The policy statement also reiterates that freedom of navigation in the SCS is an American "fundamental interest,"⁷ calling it "essential for peace and prosperity of the entire Asia-Pacific region, including the United States."⁸ Since May 1995, U.S. policy toward the SCS territorial and maritime jurisdictional disputes has adhered to the principles declared in the State Department's statement.

In June 1999, it was also discovered that the Malaysian government was constructing a two-storied concrete building on a reef known as Investigator Shoal (Pawikan to the Philippines) in the Spratly Islands group. The Philippine Foreign Secretary Domingo Siazon pointed out in a formal protest note that "the Malaysian move violated [ASEAN] agreements in 1992, 1997 and 1998 aimed at preventing activities in the area leading to any escalation of tension."⁹

Concerned about rising tensions in the SCS, the U.S. Secretary of State Madeleine K. Albright stated at the sixth ASEAN Regional Forum (ARF) in July 1999 that

[s]everal nations have sought recently to bolster their claims in the area by building or upgrading outposts. Inci-

United States. Visit the system's Bill Text and Bill Summary & Status databases, web site address at <<http://www/thomas.loc.gov>>. *S.Res. 97* was agreed to in the Senate with amendments on June 22, 1995.

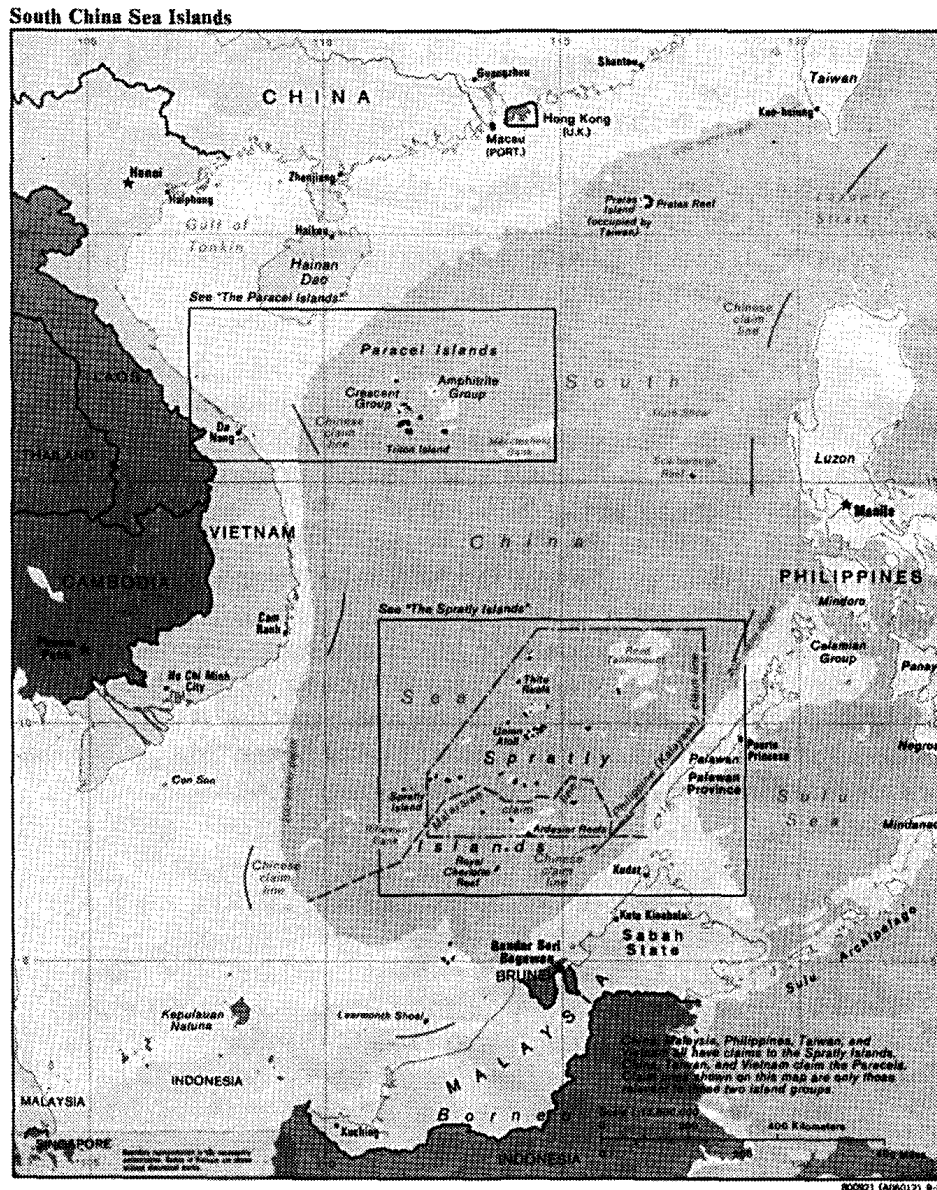
6. For the policy statement, see U.S. Interests in Southeast Asia, Hearings before the Subcommittees on International Economic Policy and Trade and Asia and the Pacific of the Committee on International Relations, House of Representatives, 104th Congress, May 30 and June 19, 1996 (Washington: U.S. Government Printing Office, 1997), Appendix, p. 157.

7. *Ibid.*

8. *Ibid.*

9. Rigoberto Tiglao, "Seaside Boom: Philippines Plunges into a New Spratly Islands Dispute — This Time with Malaysia," *Far Eastern Economic Review*, July 8, 1999, p. 14.

Map 1. The South China Sea



Source: United States, Central Intelligence Agency, 1988.

dents at sea have multiplied. Tensions have risen. And we have all been reminded that unresolved territorial disputes can spark violence that leaves no one better off.

The stakes are too high to permit a cycle to emerge in which each incident leads to another with potentially

greater risks and graver consequences. We cannot simply sit on the sidelines and watch. Nor can there be any doubt that this is an appropriate Forum for the discussion of this issue. All members of the ARF have an interest in peace and stability in the South China Sea.

So we must ask ourselves whether we are doing all we can to find diplomatic approaches, identify confidence building measures, and take other concrete steps to stabilize the situation and make a peaceful resolution in the area more likely.¹⁰

The Secretary's statement can be interpreted as a change in U.S. policy toward the territorial and jurisdictional disputes in the SCS. The U.S. government began to adopt the so-called active-neutral diplomatic approach in dealing with the sovereignty and maritime jurisdictional disputes in the SCS area.

Ralph A. Cossa of the Pacific Forum CSIS points out that the potential triggers of conflict in the SCS area, which include oil exploration or exploitation, creeping occupation, armed displacement, armed enforcement, accidents or miscalculations, acts of provocation, external/broader regional tensions, threats to the international sea lines of communications (SLOCs), and even the Asian financial crisis, could possibly draw the United States in the conflict.¹¹ Mark J. Valencia and Jon M. Van Dyke also suggest that

[u]nilateral actions by any one of the claimants — the capture of an occupied island from another's forces, unilateral drilling in the area, the capture or killing of fishermen, or large, aggressive naval maneuvers — could trigger a spiral of increasingly frequent and violent incidents. The naval and airforce arms build-up in the region — originally designed to enhance capability to protect resources in EEZs — could become a real arms race involving the acquisition of submarines, aircraft carriers, and bombers and fighters capable of reaching the islands. . . . Because intensifying and spreading violence could endanger freedom of naviga-

10. Secretary of State Madeleine K. Albright, Intervention at Sixth ASEAN Regional forum, Singapore, July 26, 1999, at <<http://secretary.state.gov/www/statements/1999/990726.html>>.

11. For detailed discussion of these potential triggers of conflict, see Ralph A. Cossa, *Security Implications of Conflict in the South China Sea: Exploring Potential Triggers of conflict*, a Pacific Forum CSIS Special Report, Honolulu, Hawaii, March 1998.

tion along the strategic sea lanes in the South China Sea, the interests of Japan and the United States could be affected.¹²

The ongoing territorial dispute between the Philippines and China over the Spratly Islands demonstrates well the possibility of the U.S. being drawn into the conflict. The discovery of the Malaysian government's construction of the building on Investigator Shoal in June 1999 also heightened tension in an area of the SCS already fraught with conflict.¹³ The recent collision of a Chinese F-8 fighter with a U.S. Navy EP-3E Aires II reconnaissance aircraft in air space over the SCS on April 1, 2001 refocused attention on the region's territorial and maritime jurisdictional disputes and demonstrated well that the SCS is indeed a site for possible confrontation between the U.S. and China.¹⁴

Shortly after the EP-3E incident, the U.S. military resumed surveillance flights near the Chinese coast, sending an Air Force RC 135 aircraft from Okinawa along the northeast coastline.¹⁵ On May 17, 2001, the *Washington Times* reported that China was in preparation for conducting large scale military exercises in the SCS area.¹⁶ In June 2001, it was further reported by the *Washington Times* that China deployed warships in the waters near the disputed Scarborough Shoal and Spratly Islands. The move was interpreted as China's strategy to follow the same pattern it used in occupying

12. Mark J. Valencia and Jon M. Van Dyke, "Comprehensive Solutions to the South China Sea Disputes: Some Solutions," in *Boundaries and Energy: Problems and Prospects* (London/The Hague/Boston: Kluwer Law International, 1998), edited by Gerald Blake, Martin Pratt, Clive Schofield, and Janet Allison Brown, p.89.

13. Rigoberto Tiglao, "Seaside Boom: Philippines Plunges into a New Spratly Islands Dispute — This Time with Malaysia," *Far Eastern Economic Review*, July 8, 1999, p. 14.

14. See Elisabeth Rosenthal and David E. Sanger, "U.S. Plane in China After It Collides with Chinese Jet," *New York Times*, April 2, 2001, p. A1; John Pomfret, "U.S., Chinese Warplanes Collide over S. China Sea," *Washington Post*, April 2, 2001, p. A1; Erik Eckholm, "China Faults U.S. in Incident; Suggests Release of Crew Hinges on Official Apology," *New York Times*, April 4, 2001, p. A1; Guy Gugliotta, "U.S. Expects Return of Plane, Crew," *Washington Post*, April 2, 2001, p. A14; and David E. Sanger, "Powell Sees No Need for Apology; Bush Again Urges Return of Crew," *New York Times*, April 4, 2001, p. A1.

15. "U.S. Resumes Surveillance Flight near China," *Stars and Stripes*, May 9, 2001, available at <<http://ww2.pstripes.osd.mil/01/may02/ed050901a.html>>.

16. "Hanoi Posts Concern Over Chinese Manoeuvres in the Paracels," *Agence France Press*, May 28, 2001; see also "China Plans to conduct Military Exercises in the South China Sea and the Woody Islands of the Paracels," *Len-He-Bao* (United Daily) (in Chinese), May 18, 2001, p. 13.

Mischief Reef in 1995, i.e., first sending fishing vessels to the area, then warships.¹⁷ In August 2001, two U.S. carrier battle groups – *USS Constellation* (CV 64) and *USS Carl Vinson* (CVN 70) conducted a large scale naval exercise (known as the “Passing Exercise”) in the SCS, which included 14 vessels from the “Connie” and Carl Vinson Battle Groups, including their accompanying cruisers, destroyers, frigates and logistic support ships. Also participating in the exercise were more than 130 carrier-based naval aircraft and more than 20 U.S. Air Force aircraft.¹⁸ China considered the exercise a move by the U.S. to show off its military strength and was directed against China.¹⁹ The exercise was also interpreted as a confirmation of the Chinese belief that the U.S. government is now indeed taking an active-neutral position in dealing with the territorial and maritime jurisdictional disputes in the SCS area.²⁰

Over the past ten years or so, there have been a large number of studies conducted that discuss different aspects of sovereignty and maritime jurisdiction disputes in the SCS area. Surprisingly, one finds that precious little energy has been devoted to studying the involvement of the United States in the process of managing and resolving potential conflicts in the SCS. It is clear that the management and settlement of the Spratly Islands disputes and the SCS issues are closely related to vital U.S. interests in preserving stability and peace, as well as promoting prosperity, in the Asia-Pacific region. Some of the countries bordering the SCS have been asking the U.S. to play a more active role in brokering the settlement of the dispute. The United States, in fact, has been participating in the so-called Track I²¹ or Track II²² dialogue process since the early

17. “China Denies Naval Activity in Spratly,” *Muzi News*, June 26, 2001, available at <<http://news.muzi.com/ll/english/1079251.shtml>>; see also *Reuters* June 26, 2001.

18. “US Navy Stages Big Show of Force in South China Sea,” *Muzi News*, August 18, 2001, available at <<http://www.latelinenews.com/ll/english/1090188.shtml>>.

19. “Whom, If Not China, Is US Aircraft Carriers’ Moving onto South China Sea Directed Against,” Consulate General of the People’s Republic of China in Houston, August 24, 2001, available at <<http://chinahouston.org/news/2001824071034.html>>.

20. The author’s communications with the experts on the South China Sea issues from China in November 2001.

21. For instance, the United States is an important participating country in the ASEAN Regional Forum (ARF), which is the so-called Track One international governmental organization in the Asia-Pacific region dealing with security issues. There are 22 participants, that is, Brunei, Cambodia, India, Indonesia, Laos, Japan, Malaysia, Mongolia, Myanmar, South Korea, the Philippines, Australia, New Zealand, Singapore, Canada, Papua New Guinea, Thailand, the PRC, Russia Federation, Vietnam, the United States, and the European Union. For more information, visit <http://www.state.gov/www/regions/eap/fs-asean_rf_990722.html>.

1990s, in which the SCS issues have been and will continue to be discussed. It is thus considered important to conduct a comprehensive study on the SCS sovereignty and maritime jurisdictional disputes mainly from the standpoint of the United States. It is hoped that this book will help fill in the gap found in the existing body of the literature, and help scholars understand more about the U.S. policy position on the SCS issues and its involvement in the disputes.

After this introduction, Chapter I will discuss the physical environment and political milieu in the SCS, in which U.S. policy with respect to the SCS territorial and maritime jurisdictional disputes is made. The internal and external input variables of the U.S. SCS policy, that is, U.S. national interests and other nations' SCS policies, will be addressed in Chapter II. Chapter III will examine U.S. policy on the Spratlys Islands and the SCS under the Reagan, Bush, and Clinton administrations. This is to be followed by Chapter IV, discussing and evaluating the policy outcomes derived from the actions taken by the U.S., in particular, the issue of the official statement by the U.S. Department of State in May 1995. Chapter V will study policy inputs and the accompanying new challenges for the United States since 1998. Chapter VI will discuss in detail the conversion in U.S. policy making regarding the sovereignty and maritime jurisdictional disputes in the Spratlys/SCS area. The overall situation in the SCS in the years 2000 and 2001 as well as U.S. SCS policy under the new Bush administration will be examined in Chapter VII. This book will conclude by summarizing those principles and positions outlined in the U.S. official statements in relation to territorial and maritime jurisdictional disputes in the SCS and offering a number of unsolicited policy recommendations from the author.

22. For instance, the United States is participating in the Council for Security Cooperation in the Asia-Pacific (CSCAP), which is one of the major Track II non-governmental organizations in the Asia-Pacific region. There are 17 member committees and one associate member. Membership in the CSCAP is on an institutional basis. Associate membership may be granted to an institute or consortium of institutes in a country or territory. The 17 member committees are Australia, Canada, European Union, Indonesia, Japan, South Korea, Malaysia, the Philippines, Singapore, Thailand, the United States, New Zealand, Russia Federation, North Korea, Mongolia, Vietnam, and the PRC. The associate member is IDSA (India). CSCAP has five working groups, namely: (1) Maritime Cooperation; (2) North Pacific Dialogue; (3) Comprehensive and Cooperative Security; (4) Confidence Security Building Measures (CSBMs); and (5) Transnational Crime. For CSCAP home page, visit <<http://www.cscap.org/about.htm>>.

CHAPTER I

PHYSICAL ENVIRONMENT AND POLITICAL MILIEU IN THE SOUTH CHINA SEA AREA

INTRODUCTION

Factors such as geography, demography, resource potential and distribution, and technological development are important to the study of ocean law and policy. Any studies of the territorial and maritime jurisdictional disputes in the SCS area cannot but refer to the geography of the SCS, mainly because it is within this "milieu" that ocean policies are made by decision-makers of the countries concerned. Geographical and other environmental factors, such as the strategic importance of the existing choke-points, the dependence upon the sea for major marine transportation routes, the existence of the islands along the coast, the potential of living and non-living ocean resources, and the demographic, cultural, economic and historical conditions, have often been considered by decision-makers when important national policies concerning the SCS are made. In addition to the physical environment, the political milieu in the SCS region also has had an impact on the policy making of the United States.

I. GEOGRAPHY OF THE SOUTH CHINA SEA

Extending approximately from latitude 3 degrees south to 23 degrees north and from longitude 100 degrees east to 120 degrees east,¹ the SCS is the largest of the six marginal seas which lie between the mainland of Asia and a rampart of offshore islands.² The SCS has an area of 648,000 square nautical miles (about 1,200,096 square km.)³ It is surrounded by 10 littoral states: Taiwan, China,

1. Hal Olson, "Marine Traffic in the SCS," *Ocean Yearbook*, Vol. 12, 1996, p. 137.

2. The six marginal seas are the Andaman Sea, the SCS, the East China Sea, the Sea of Japan, the Sea of Okhotsk and the Bering Sea. J.R.V. Prescott, *The Maritime Political Boundaries of the World* (London & New York: Methuen, 1985), p. 209.

3. *Ibid.* Hal Olson gives the area for the SCS, including the Gulf of Thailand and the Gulf of Tonkin (Beibu Wan in Chinese), as 1,000,000 square miles; *Heinemann World Atlas* (1995) gives the area as 800,000 square kilometres (310,000 square miles); the International Hydrographic Bureau gives the SCS, without the area of the Gulf of Thailand and Tonkin, as 959,160 square nautical miles; *National Geographic Atlas of the*

Vietnam, Cambodia, Thailand, Singapore, Malaysia, Indonesia, Brunei, and the Philippines. It connects the Pacific Ocean and the Indian Ocean by narrow outlets such as the Bashi Channels in Luzon Strait, the Malacca Strait and the Singapore Strait. It consists primarily of the territorial seas and exclusive economic zones of the 10 littoral states mentioned above (see Map 2). The SCS, accordingly, is a semi-enclosed sea as defined in Article 122 of the 1982 LOSC.⁴

A multitude of islands, atolls, banks, reefs, and shoals, some rising only slightly above the sea surface and others remaining submerged, abound throughout the SCS, and are clustered into four large archipelago groups: (1) the Pratas (Dongsha), situated in an area between latitude 20 degrees 30 minutes and 21 degrees 31 minutes north, and between longitude 116 degrees and 117 degrees east; (2) the Paracels (Xisha in Chinese, Hoang Sa in Vietnamese), located in an area between latitude 15 degrees 46 minutes and 17 degrees 8 minutes north, and between longitude 111 degrees 11 minutes and 112 degrees 54 minutes east; (3) the Macclesfield Bank (Zhongsha), situated in the area between latitude 15 degrees 20 minutes and 16 degrees 20 minutes north, and between longitude 113 degrees 40 minutes and 115 degrees east; and (4) the Spratlys (Nansha in Chinese, Truong Sa in Vietnamese, and Kalayaan in Philippines), located in an area between latitude 4 degrees and 11 degrees 30 minutes north, and longitude between 109 degrees 30 minutes and 117 degrees 50 minutes east.⁵

World, published in 1970, gives the area as 1,148,500 square miles. For Olson's figure, see Hal Olson, "Marine Traffic in the SCS," *Ocean Yearbook*, Vol. 12, p. 17; for HWA's figure, see Christopher C. Joyner, "The Spratly Islands Dispute: Rethinking the Interplay of Law, Diplomacy, and Geo-politics in the SCS," *The International Journal of Marine and Coastal Law*, Vol. 13, No. 2, 1998, p. 195, footnote 1; for IHB's figure, see Joseph Morgan and Mark J. Valencia, ed., *Atlas for Marine Policy in Southeast Asia* (Berkeley: University of California, 1984), p. 4; for National Geographical Atlas of the World's figure, see Northcutt Ely and J. Michel Marcoux, "National Seabed Jurisdiction in the Marginal Sea: The SCS," in *Limits to National Jurisdiction over the Sea*, edited by George T. Yates III and John Harding Young (Charlottesville: University Press of Virginia, 1974), p. 124.

4. Article 122 of the 1982 LOSC provides that "'enclosed or semi-enclosed sea' means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States."

5. The locations of the four main groups are given in accordance with Appendix F (A basic gazetteer) in Marwyn S. Samuel, *Contest for the SCS* (New York: Methuen, 1982), pp. 183-188.

A. The Pratas Islands

The Pratas Islands lie to the east and slightly to the north of China's Hainan Province, approximately 140 nautical miles (260 km) from mainland China, 170 nautical miles (315 km) from Hong Kong, and 240 nautical miles (440 km) from Taiwan.⁶ The Pratas Islands are comprised of Dongsha Island, Dongsha Reef, Nanwei Shoal and Beiwei Shoal.⁷ The largest island (Dongshadao) in the Pratas group has a size of 6 km long and 2 km wide.⁸

B. The Paracel Islands

The Paracel Islands lie about 300 nautical miles (556 km) southeast of Hainan Province⁹ and 240 nautical miles (445 km) from Da Nang, Vietnam.¹⁰ The Paracel Islands consist of more than 30 islands, islets, reefs, sandbanks and shoals, which are clustered into two main groups: the Amphitrite Group (Xuande Islands) and the Crescent Group (Yongle Islands). Woody Island (Yongxingdao in Chinese, Dao Phu Lam in Vietnamese) is the largest island in the Amphitrite Group, with a size of 2 km long and 1.1 km wide. Pattle Island (Shanhudao in Chinese, Dao Hoang Sa in Vietnamese), having an area of 1 km long and 0.5 km wide, is the largest islet in the Crescent Group of the Paracel Island.¹¹

C. The Macclesfield Bank

The Macclesfield Bank, consisting of more than 20 reefs and hidden shoals, lies 13 or 15 to 70 metres under water in the middle of the SCS¹² and is located approximately 54 nautical miles (100 km) east of the Paracel Islands.¹³ Huangyandao (Scarborough Shoal), located southeast of the Macclesfield Bank, is the only above water shoal nearby this group of submerged reefs, atolls and shoals.

6. Samuel, *ibid.*, p. 183; Daniel J. Dzurek, "Boundary and Resources Dispute in the SCS," *Ocean Yearbook*, Vol. 5, edited by Elisabeth Mann Borgese and Norton Ginsburg (Chicago and London: the University of Chicago Press, 1985), p. 257.

7. Lin Duo and Wu Kwok Keung, editors, *Wonders in the SCS* (Hong Kong: Peace Book, Co., Ltd., 1992), p. 15.

8. Samuel, *supra* note 5, p. 183.

9. *Wonders in the SCS*, *supra* note 7, p. 15.

10. Samuel, *supra* note 5, p. 184.

11. *Ibid.*, pp. 184-185.

12. *Wonders in the SCS*, *supra* note 7, p. 15.

13. Samuel, *supra* note 5, p. 187.

Map 2. The SCS and Its Littoral Countries



Source: <http://www.middlebury.edu/SouthChinaSea/maps/map_big.jpg>.

D. The Spratly Islands

The Spratly Islands (see Map 3), consisting of 33 islands, cays and rocks that are permanently above water,¹⁴ stretch approximately 1,000 km from north to south.¹⁵ This group of islands lies about 650 km east of the Vietnamese coast, about 750 km south of the Paracel Islands; there is about 1,000 km from Hainan Province to the northernmost edge of the Spratlys, it lies 1,300 km south of Taiwan, and about 100 km west of Palawan Island of the Philippines.¹⁶ Itu Aba (Taipingdao), the largest in the Spratly archipelago and the only one with freshwater wells, is only 960 x 400 meters

14. J. R. V. Prescott, *Maritime Jurisdiction in Southeast Asia: A commentary and Map*, East-West Environmental and Policy Institute Research Report, No. 2 (Honolulu, 1981), p. 30, cited from Jon M. Van Dyke and Dale L. Bennett, "Islands and the Delimitation of Ocean Space in the SCS," *Ocean Yearbook*, Vol. 10, 1993, p. 58.

15. Samuel, *supra* note 5, p. 188.

16. *Ibid.*, pp. 188-190.

(3,150 x 1,300 feet) and rises about eight feet above the water surface.¹⁷

II. IMPORTANCE OF THE SPRATLY ISLANDS AND THE SOUTH CHINA SEA

A. Significant Sources of Energy

Although the exact amount of oil and gas deposits in the SCS is unknown, it is believed that the Spratly Islands area of the SCS is a significant source of energy. In 1987, the SCS Institute of Oceanology of China conducted a geophysical survey of portions of the Spratlys and confirmed strong evidence of commercial oilfields.¹⁸ In 1989, the PRC conducted another seismic survey in the SCS area and estimated that the Spratly Islands held deposits of 25 billion cubic metres of natural gas and 105 billion barrels of oil.¹⁹ In 1988, U.S. geologists estimated reserves of 2.1-15.8 billion barrels of oil in the Spratlys.²⁰ Another study done by Russia's Research Institute of Geology of Foreign Countries in 1995 estimated that the equivalent of 6 billion barrels of oil might be held in the same area, of which 70 percent would be natural gas.²¹

Vietnam is now developing the three known oilfields located in the western portion of the Spratly Islands area, namely, *Bach Ho* (White Tiger), *Dai Hung* (Big Bear), and *Zong* (Dragon), which contain 27 million tons, 54-81 million tons, and 21 million tons of recoverable oil reserves, respectively. However, a more recent estimate presented by Charles J. Johnson of the East-West Center puts *Bach Ho's* total oil reserves at 88.4 million tons and *Dai Hung's* at 102 million tons.²² Another large oilfield, *Thanh Long* (Blue Dragon), which lies next to *Dai Hung*, was estimated as having oil reserves of 68-204 million tons and a substantial amount of natural gas.²³ It was further estimated in October 2001 that the *Dai Hung*

17. Daniel J. Dzurek, *supra* note 6, p. 259.

18. *Energy Asia*, Vol. 9, No. 3, August 1987, p. 12.

19. John W. Garver, "China's Push Through the SCS: The Interaction of Bureaucratic and National Interests," *The China Quarterly*, September 1992, p. 1015.

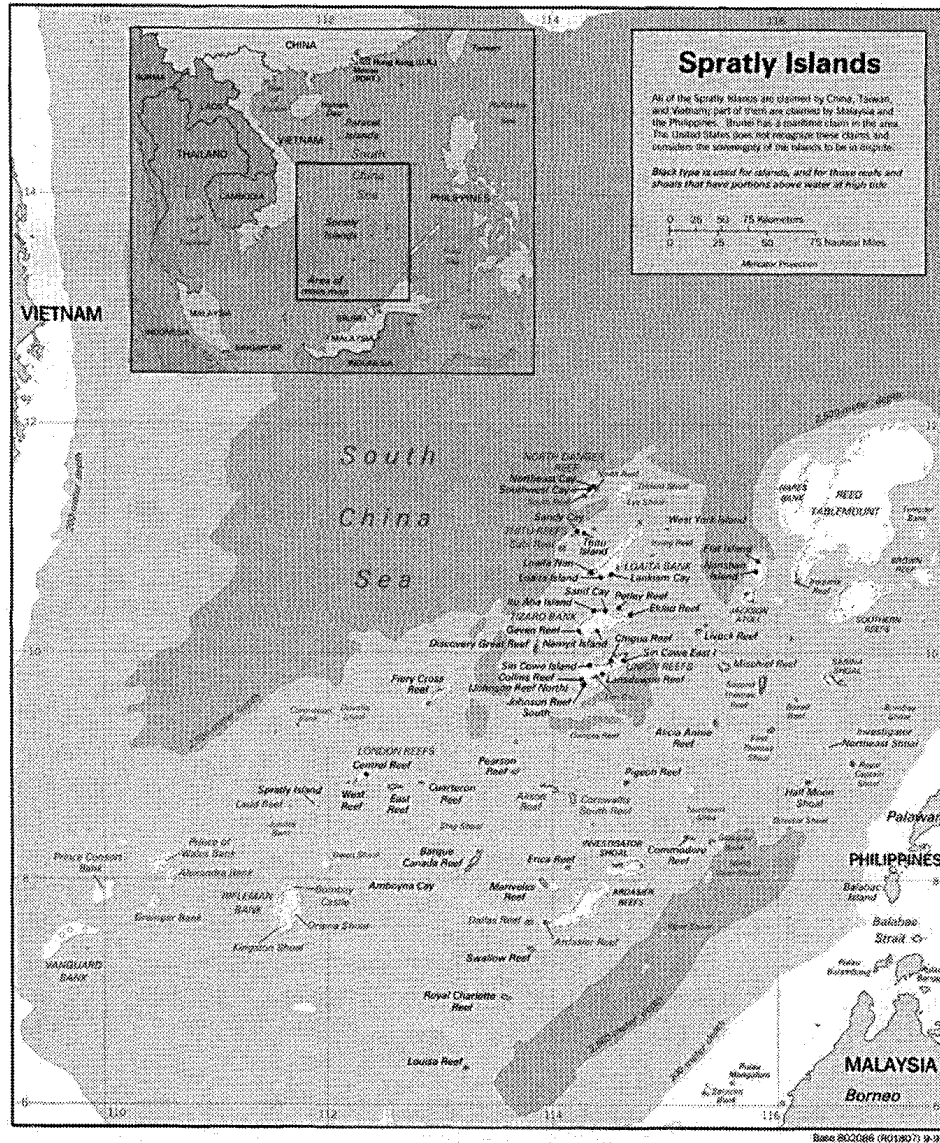
20. Bruce Blanche and Jean Blanche, "Oil and Regional Stability in the SCS," *Janes Intelligence Review*, Vol. 7, No. 11, November 1, 1995, p. 511.

21. United States Institute of Peace, *The SCS Dispute: Prospects for Preventive Diplomacy*, Special Report, at <<http://www.usiat.org/oc/sr/South-China-Sea.html>>, visited on November 28, 1997.

22. Lu Ning, *Flashpoint Spratlys* (Singapore: Dolphin Trade Press Pte Ltd., 1995), p. 62 and p. 73.

23. *Ibid.*, p. 62.

Map 3. The Spratly Islands



oilfield pumped around 2,000 to 4,000 barrels a day. The Vietsovpetro venture, a Vietnamese-Russian venture has operated the *Dai Hung* oilfield since 1999 and will continue after Russia gives up the

Cam Ranh Bay naval base in 2004.²⁴ In May 1992, China signed a contract with the U.S. based Creston Energy Corporation for oil exploration in *Wanantan* (Vanguard Bank). The contract area, WAB-21, is located in the western part of the Spratly Islands group and lies next to Vietnam's *Thanh Long* oilfield.²⁵ The Philippines also has been looking for oil and gas in the Reed Bank area of the disputed Spratly Islands group since 1976, but has made no discoveries yet.

B. Strategic Passageway

The strategic importance of the Spratly Islands and the SCS has long been recognized. They contain key sea-lanes through which oil and many other commercial resources flow from the Middle East and Southeast Asia to Taiwan, China, Japan, and Korea (see Chart 1). These key sea-lanes or so-called "chokepoints" include: the Straits of Malacca and Singapore, Sunda Strait, and the Straits of Lombok and Makasar (see Chart 2). These sea-lanes are critical to the movement of maritime powers' military forces, especially the U.S., from the Western Pacific to the Indian Ocean and the Persian Gulf. The area also contains two of the busiest ports in the world, Singapore and Hong Kong. More than 99% of the world's products move by sea – a vast portion of which transits the SCS. According to Hal Olson, "[m]ore than 10,000 vessels of greater than 10,000 dwt move southward through the South China Sea annually, with well over 8,000 proceeding in the opposite direction."²⁶ If freedom of navigation cannot be maintained, the economic health of the countries in the Asia-Pacific will be seriously affected.

The islands scattered in the SCS provide potential staging areas for surveillance, sea-lane interdiction and other naval operations that could disrupt maritime traffic from Singapore to southern China and Taiwan. In 1933, France annexed some of the Spratly Islands mainly out of a strategic concern over expanding Japanese power in Southeast Asia. The Spratlys' strategic value was also confirmed during World War II when the Japanese used the islands as a submarine base.²⁷ It was reported that in the Paracels Islands,

24. "Russia, Vietnam Pleased With Navy Base Progress," *Reuters*, October 19, 2001.

25. According to one of the PRC officials who is now a senior technical consultant for Oceanology S5.

26. Hal Olson, *supra* note 1, p. 137.

27. Lu Ning, *Flashpoint Spratlys* (Singapore: Dolphin Trade Press Pte Ltd., 1995), p. 58.

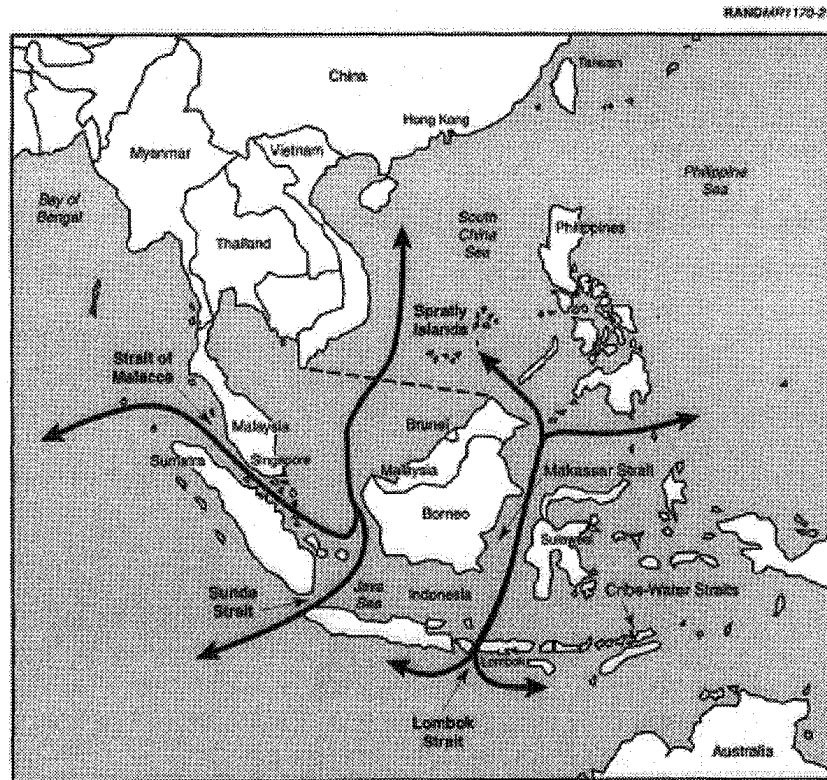
A world map showing major shipping routes and ports. Thick black lines represent shipping lanes, and small black squares represent major ports. The map includes North America, South America, Europe, Africa, Asia, and Australia.

China has established a major military presence on Woody Islands and has built a 350-meter pier and a 2,600-meter airstrip, which is capable of handling all types of People's Liberation Army (PLA) aircraft, including *Su-27*. There are oil tanks, gun emplacements and ammunition storage bunkers, which underline the perception that Woody Island could be used as a staging point to support offensive operations in the Spratly Islands. It was also reported that China has deployed Silkworm anti-ship cruise missiles on Woody Island, having a range of some 59 miles and therefore could be used to threaten nearby shipping traffic and pose a major threat to the movement of the U.S. Pacific Fleet. Moreover, China has established a signals intelligence station on Rocky Island, just to the north of Woody Island. It is believed that the station provides good coverage of military signal activity in that part of the SCS.²⁸

Fish has traditionally been a valuable natural resource in the SCS and the Spratly Islands area. While it is believed that the SCS is rich in fishing resources, the exact amount and value of the harvestable fish in the area, just like the hydrocarbon potentials, remains to be assessed. China estimated a fish stock of 140,000 tons in

28. See David G. Wiencek, "South China Sea Flashpoint," *China Brief*, Vol 1, Issue 2, July 24, 2001, available at <http://china.jamestown.org/pubs/view/cwe_001_002_004.htm>.

**Chart 2. Strategic Chokepoints
(Straits of Malacca, Sunda, and Lombok and Sea-Lanes
Passing the Spratly Islands)**



Source: John H. Noer, *Chokepoints: Maritime Economic Concerns in Southeast Asia*, Washington, D.C.: National Defense University, 1996.

the Spratly Islands area, of which nearly 80,000 tons are allowable catch.²⁹ According to Mark J. Valencia's study, the value of tuna harvestable on a yearly basis in the southern sector of the Spratly Islands area was put at US\$50 million.³⁰ The bordering countries in the SCS, namely, China, Indonesia, Thailand, the Philippines, Malaysia, Taiwan, and Vietnam are among the world's top 25 major fishing nations in terms of fish catch.³¹ The modernization and ex-

29. Liu Zon-Zi, "To Treat Fisheries Resources in the Spratly Islands as National Resources," paper presented at Academic Symposium on SCS Islands, held in Haikou, Hainan, China, 1991.

30. Mark J. Valencia, *Malaysia and the Law of the Sea* (Kuala Lumpur, Institute of Strategic and International Studies, Malaysia, 1991), pp. 56-58.

31. See "World Catch Statistics 1993-1996," in *World Fishing*, September 1998, p. 3.

pansion of the fishing fleet has resulted in over-fishing in the bordering countries' near-shore and off-shore waters, which, in turn, has forced their fleets to develop high sea fisheries in the SCS. After the proclamation of the 200-mile Exclusive Economic Zones by the neighbouring coastal states in the area, fisheries in the SCS became complex issues and created fisheries disputes among countries such as China, Vietnam, the Philippines, Taiwan, Thailand, Indonesia, and Malaysia.

D. Legal Basis for Claiming Maritime Zones

Ownership of the islands located in the Spratlys area and in the SCS is also important because it serves as the legal basis for claiming maritime zones surrounding the islands. According to Article 121 of the 1982 LOSC, which entered into force on November 16, 1994, islands can have their own 12 nautical-mile territorial sea, 24 nautical-mile contiguous zone, and 200 nautical-mile EEZ, as well as continental shelf. A state, which owns islands, is entitled to claim exclusive jurisdiction over waters and resources surrounding the islands. In the exclusive economic zone of the islands, the coastal state has sovereign rights "for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds."³² A coastal state also has jurisdiction in the zone with regard to the establishment and use of artificial islands, installations and structures, marine scientific research, and the protection and preservation of the marine environment.³³

Even if the islands fail to meet the qualifications as provided in Article 121 of the 1982 LOSC,³⁴ and therefore, cannot have their own EEZs or continental shelves, they can still be used as base-points for the purpose of drawing baselines from which the coastal state concerned may extend its claim to exclusive jurisdictional competence over the waters and resources of the Spratlys area and the SCS. More importantly, if the state has territorial sovereignty

32. Article 56 (a) of the 1982 LOSC.

33. Article 56 (b) of the 1982 LOSC.

34. According to Article 12 1 (1) of the 1982 LOSC, "[a]n island is a naturally formed area of land, surrounded by water, which is above water at high tide." Under Article 121(3), "[r]ocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zones or continental shelf."

over an entire archipelago, it has the right to draw a straight baseline between the outermost islands and will have exclusive rights to exploit the resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil within the area enclosed by that baseline.

III. COUNTRIES BORDERING THE SOUTH CHINA SEA

There are ten countries bordering the SCS: China, Taiwan, the Philippines, Brunei, Malaysia, Indonesia, Singapore, Thailand, Cambodia, and Vietnam. The land and population sizes, political systems, economic situations and performance, as well as military capabilities of these countries vary markedly. While China has a land territory of 9,596,960 sq km, Singapore has only 647.5 sq km. China has a population of 1.23 billion, the largest in the world, but Brunei only has a population of 315,292. China and Vietnam are both communist/socialist countries, while Taiwan has a multiparty democratic regime headed by a popularly elected president. The GDP per capita of the ten countries surrounding the SCS also differs considerably. While Singapore has the highest GDP per capita at US\$24,600, Cambodia has the lowest GDP per capita at US\$715.

Although the ten countries bordering the SCS vary markedly in many respects, they are very much alike in others. First of all, they all depend heavily upon the use of maritime space and the sea's living and non-living resources. Secondly, foreign trade plays a very important role in the countries' economic development plans. Thirdly, the United States has been one of the key trade partners of the ten countries in the region. Finally, all of the countries are involved, to varying degrees, in disputes over the ownership of islands, maritime boundary delimitation, or conflicting maritime jurisdiction. These include the Natuna Islands dispute between Indonesia and Vietnam, and between Indonesia and China; the dispute among the three bordering states of the Eastern Gulf of Thailand (namely, Cambodia, Vietnam, and Thailand); the dispute between China and Vietnam in the Gulf of Tonkin; the Celebes Sea dispute and the Singapore Straits (Pulau Batu Putih) dispute between Singapore and Malaysia; the Paracel Islands dispute among China, Taiwan, and Vietnam; and the Spratly Islands dispute among China, the Philippines, Vietnam, Brunei, Malaysia, and Taiwan.

IV. REGIONAL ORGANIZATIONS AND BILATERAL OR MULTILATERAL SECURITY ARRANGEMENTS

A number of Track One, Track Two, and other non-governmental organizations are active in the SCS area, and are involved, directly or indirectly, in formulating policies and initiating activities in relation to the management and resolution of the territorial and maritime jurisdictional disputes in the SCS (see Table 1). The ASEAN, its Ministerial Meetings (AMM)³⁵ and Post Ministerial Conferences (PMC),³⁶ ASEAN + 3,³⁷ and ARF³⁸ are the main Track One organizations in the region. The highest authority of ASEAN is the Meeting of the ASEAN Heads of government, known as the ASEAN Summit, which is held formally every three years and informally at least once in between to lay down directions and initiatives for ASEAN activities. During the sixth ASEAN Summit meeting, for example, the ASEAN Heads of Government declared, *inter alia*, that

[w]e shall promote efforts to settle disputes in the SCS by peaceful means in accordance with international law, including the 1982 United Nations Convention on the Law of the Sea, and in the spirit of the 1992 ASEAN Declaration on the SCS. We call on parties to exercise restraint and to refrain from taking actions that are inimical to the

35. The AMM (Foreign Ministers) is held each July on an annual basis. Ministerial meetings on several other sectors, such as agriculture and forestry, economics, energy, environment, finance, information, investment, labour law, regional haze, rural development and poverty alleviation, science and technology, etc., are also held.

36. Consultations between ASEAN and its Dialogue Partners are held each July at the Foreign Ministers' level on an annual basis, usually immediately following the AMM, and therefore named "PMC." ASEAN's Dialogue Partners include: Australia, Canada, China, European Union, India, Japan, Republic of Korea, New Zealand, the Russian Federation, the United States, and the United Nations Development Programme. The last several PMCs focused increasingly on international economic and political issues and on transnational issues, such as crime, narcotic, trafficking in persons, environment, and health. In 2001, however, transnational issues were omitted from the PMC agenda.

37. In 1997, the leaders of ASEAN, China, Japan, and the Republic of Korea agreed to hold annual meeting among them. In November 1999, they issued a Joint Statement on East Asia Cooperation outlining the areas of cooperation. The 5th ASEAN + 3 Summit was held in Bandar Seri Begawan, Brunei on November 5, 2001.

38. The ARF, drawing together 23 countries, aims to promote confidence-building, preventive diplomacy and conflict resolution in the Asia-Pacific region.

peace, security and stability of Southeast Asia and the Asia-Pacific region.³⁹

The AMM is another important mechanism within ASEAN, at which the ASEAN foreign ministers meet to formulate policy guidelines and coordinate ASEAN activities dealing with SCS issues. During the 29th AMM, held in Jakarta in July 1996, the ASEAN Foreign expressed their concern over the situation in the SCS. The Ministers called for the peaceful resolution of the disputes and self-restraint by the parties concerned. They endorsed the idea of concluding a regional code of conduct in the South China Sea which will lay a foundation for long term stability in the area and foster understanding among claimant countries.⁴⁰

Since its establishment in 1994, the ARF and the Meeting of Senior Officials for the ARF (ARF-SOM) have also included SCS issues in the meeting agenda for discussion. The ARF serves as a multilateral consultative forum aimed at promoting preventive diplomacy and confidence building among the states in the Asia-Pacific region. The ARF consists of the ten ASEAN member countries and the ASEAN dialogue partners and observers. The current participants in the ARF are: Australia, Brunei Darussalam, Cambodia, Canada, China, Democratic People's Republic of Korea, India, Indonesia, Japan, the European Union, the Republic of Korea, Laos, Malaysia, Myanmar, Mongolia, New Zealand, Papua New Guinea, the Philippines, the Russian Federation, Singapore, Thailand, the United States, and Vietnam. The ARF-SOM provides support and follow-up on the activities of the ARF. On July 26, 1999, the participating ministers at the sixth meeting of the ARF stressed the importance of freedom of navigation in the SCS area. They welcomed the continued exercise of self-restraint by all sides and the positive contributions made by the bilateral consultations between the countries concerned. They also noted that ASEAN was working on a regional Code of Conduct for the SCS.⁴¹

39. The ASEAN Heads of Governments met in Hanoi, Vietnam on December 16, 1998. For the Hanoi Declaration of 1998, visit ASEAN official website at <<http://www.us-asean.org/AFTA/hanoideclaration.htm>>.

40. For the Joint Communiqué of the Twenty-Ninth ASEAN Ministerial Meeting, Jakarta, 20-21 July 1996, visit the ASEAN official website at <<http://www.asean.org/politics/pramm29.htm>>.

41. For the Chairman's Statement of the Sixth Meeting of the ARF, see the ASEAN official website at <http://www.asean.or.id/politics/pol_arf6.htm>.

Table 1. Membership in Regional Organizations in the Asia-Pacific Region

	Political/Security Fora			
	Track One		Track Two	
	ASEAN (10)	ARF (23)	CSCAP (18)~	SCS Workshop (11)
Australia		X	X*	
Brunei Darussalam	X	X		X
Burma (Mynmar)	X	X		
Cambodia	X	X		X
China		X	X	X
Canada		X	X*	
India		X	X#	
Indonesia	X	X	X*	X
Japan		X	X*	
Korea [North]		X	X	
Korea [South]		X	X*	
Laos	X	X		X
Malaysia	X	X	X*	X
Mongolia		X	X	
New Zealand		X	X	
Papua New Guinea		X		
Philippines	X	X	X*	X
Russia		X	X	
Singapore	X	X	X*	X
Taiwan			(1)	X
Thailand	X	X	X*	X
United States		X	X*	
Vietnam	X	X	X	X
Other/Notes		+EU#*	+EU#(2)	

Notes: All ASEAN Dialogue Partners and Observers may sit in at ARF and other ASEAN meetings. (1) Taiwanese scholars and security specialists participate, by invitation, in a private capacity in working group meetings, dubbed as "other participants." (2) ~ = nation-states represented by member committees and/or institutes; *= founding members; # = associate members; + = international organization. The EU is counted here as one member.

The two important non-governmental Track Two mechanisms⁴² dealing, to a different degree, with the SCS issues in the Asia-Pacific region are: the Council for Security Cooperation in the Asia-Pacific (CSCAP) and the Workshop on Managing Potential Conflict in the SCS (SCS Workshop). CSCAP was officially inaugurated in

42. The Track II dialogue process involves the participation of academic, policy analysts, NGOs, government officials in their private capacity and others in policy-related activities such as seminars, conferences, or research designed to influence foreign policy in the political-security realms.

Kuala Lumpur in June 1993. The purpose of CSCAP is to provide "a structured process for regional confidence building and security cooperation among countries and territories in the Asia-Pacific region."⁴³ One of the major functions of CSCAP is to provide an informal mechanism by which political and security issues can be discussed by scholars, officials, and other participants, in their private capacities. Membership and participation in CSCAP is on an institutional basis. The current member committees, associate members, and "other participants"⁴⁴ in CSCAP are: Australia, Canada, China, Democratic People's Republic of Korea, the European Union, India, Indonesia, Japan, South Korea, Malaysia, Mongolia, New Zealand, the Philippines, Singapore, Thailand, the United States, the Russian Federation, and Vietnam.

The SCS Workshop is another informal multilateral dialogue process organized by Indonesia to address issues, in particular those related to the Spratly Islands and the broader SCS. Eleven SCS Workshops have been held since 1990, together with a series of technical working group meetings (TWGMs), group of experts meetings (GEMs), and study group meetings (SGMs) on issues concerning legal matters, marine scientific research, safety of shipping navigation and communications, environmental protection, hydrographic data and information exchange, resource assessment, and zones of co-operation in the South SCS (see Table 2).

Eight of the eleven countries bordering the SCS are member states of the ASEAN, namely, the Philippines, Vietnam, Brunei, Malaysia, Indonesia, Thailand, Cambodia, and Singapore. With the exception of Taiwan, all of the eleven countries participate in ARF. Except Brunei, all of the eleven countries also participate in CSCAP activities. All of the eleven countries participate in the SCS Workshop. The United States also participates in the ARF and CSCAP. In 1977, ASEAN formally established full dialogue relations with the United States. In 1996, China was accorded ASEAN dialogue partner status. The ASEAN-US and the ASEAN-China dialogue meetings are also important fora for discussing international and regional political security issues which could include the existing territorial and maritime jurisdictional disputes in the SCS.

43. Article II(1) of the Charter of the CSCAP. For the charter, visit CSCAP-Australia's website at <<http://coombs.edu.au/Depts/RSPAS/AUSCSCAP/Cscaat.html>>.

44. Due to the PRC objection, Taiwan's bid for CSCAP membership, either as a full member, associate member, or observer, was not accepted by the organization. In 1997, a compromise was reached, which allows Taiwan participate in CSCAP activities, in particular the five working group meetings, as "other participant" of the organization.

Being considered as an “outsider” of the SCS issues and because of the concern over the internationalization of the SCS issues raised by China, the U.S. has never been invited to participate in the SCS Workshop. American scholars, however, did occasionally attend the workshop, or workshop-related meetings as “resource persons.”

In addition to the aforementioned Track One and Track Two governmental and non-governmental organizations, there also exist several bilateral and multilateral security arrangements in the SCS area. Two of the eleven countries bordering the SCS are parties to the Five Power Defense Arrangements (FPDA), namely, Singapore and Malaysia. The other three parties to the FPDA are the United Kingdom, Australia, and New Zealand. The FPDA commits its members to consult with each other in the event of external aggression against Singapore or Malaysia. It performs the functions of an important political and psychological deterrent. In the event of aggression, an aggressor would have to contend with the reaction and combined response of the other FPDA members.⁴⁵

The other two members of ASEAN, namely, the Philippines and Thailand, are treaty allies of the United States, with commensurate security obligations. Upon ratification by the Philippine Senate, the 1998 VFA, which lays out the legal status of U.S. defense personnel temporarily in the Philippines in connection with official duties, will facilitate expanded military cooperation between Washington and Manila. The U.S.-Thai bilateral defense relationship has facilitated U.S. access and interoperability in the SCS area. Other countries bordering the SCS, such as Brunei, Indonesia, Malaysia, and Singapore, have also publicly expressed their support for a continued U.S. military presence in the region and make naval and air maintenance and repair facilities available to the U.S. Other examples of bilateral defense cooperation, such as the U.S.-Japanese alliance and the U.S.-Australian alliance, will also have an important influence on achieving vital U.S. interests in the SCS area.⁴⁶

45. For more discussion, see Philip Methven, *The Five Power Defence Arrangements and Military Cooperation Among the ASEAN States: Incompatible Models for Security in Southeast Asia?* Canberra, Australia: Strategic and Defence Studies Centre, Research School of Pacific Studies, Australia National University, 1992.

46. For more information about U.S. perspectives, relationships, interests and strategy toward the Asia-Pacific region, see the U.S. Department of Defense, *The United States Security Strategy for the East Asia-Pacific Region*, November 23, 1998, available at <<http://www.usia.gov/regional/ea/easec/easr98.htm>>.

Table 2. A List of SCS Workshops, TWG, GE, and other Meetings Held between 1990-2001

1990:	1 st SCS Workshop	Bali, Indonesia
1991:	2 nd SCS Workshop	Bandung, Indonesia
1992:	3 rd SCS Workshop	Yogyakarta, Indonesia
1993:	TWG-MSR1	Manila, Philippines
	TWG-MSR2	Surabaya, Indonesia
	TWG-RA1	Jakarta, Indonesia
	4 th SCS Workshop	Surabaya, Indonesia
1994:	TWG-MSR3	Singapore
	TWG-MEP1	Hangzhou, PRC
	5 th SCS Workshop	Bukittinggi, Indonesia
1995:	TWG-MSR4	Hanoi, Vietnam
	TWG-SNSC1	Jakarta, Indonesia
	TWG-LM1	Phuket, Thailand
	6 th SCS Workshop	Balikpapan, Indonesia
1996:	TWG-MSR5	Cebu, Philippines
	TWG-SNSC2	Bandar Seri Bagawan, Brunei
	GEM-Biodiversity Proposal	Cebu, Philippines
	7 th SCS Workshop	Batam, Indonesia
1997:	TWG-MEP2	Hainan, PRC
	TWG-LM2	Chiang Mai, Thailand
	GEM-MEP1	Phnom Penh, Cambodia
	GEM-ETM1	Singapore
	GEM-HDI1	Kuching, Malaysia
	SCSBTC	Singapore
	8 th SCS Workshop	Pacet, Puncak, Indonesia
1998:	TWG-SNSC3	Singapore
	TWG-LM3	Pattaya, Thailand
	GEM-HDI2	Singapore
	GEM-MSR (J)	Manila, Philippines
	GEM-MEP (J)	Manila, Philippines
	GEM-NL/NHR	Jakarta, Indonesia
	IM-SGZC1	Vientiane, Laos
	9 th SCS Workshop	Jakarta, Indonesia
1999:	GEM-SAR/IAS	Kota Kinabalu, Malaysia*
	IM-SGZC2	Bali, Indonesia
	GEM-EL1	Shanghai, China
	TWG-LM4	Koh Samui, Thailand
	10 th SCS Workshop	Bogor, Indonesia
2000:	GEM-HDI3	Bali, Indonesia
	TWG-LM5	Cha Am, Thailand
2001:	11 th SCS Workshop	Banten, Indonesia
	Special Meeting	Jakarta, Indonesia

Keys: TWG = Technical Working Group meeting; GEM = Group of Experts Meeting SCS Workshop = Workshop on Managing Potential Conflicts in the SCS; MSR = Marine Scientific

Research; MEP = Marine Environmental Protection; SNSC = Safety of Navigation, Shipping and Communications; RA= Resources Assessment; LM = Legal Matters; ETM = Education and Training of Mariners; HDI = Hydrographic Data and Information Exchange; NL/NHR = Non-living and Non-Hydrocarbon Resources; SGZC= Study Group on Zones of Cooperation ; *GEM on Law Enforcement and Unlawful Acts at Sea and GEM on Search and Rescue were combined. (Tabulated by the author).

Note: The 11th SCS Workshop was supposed to be held by the end of the year 2000, but was postponed to 26 – 29 March 2001, mainly because of the Canadian International Development Agency's decision to terminate funding the participants. A special meeting to discuss funding for the SCS Workshop was held in Jakarta, Indonesia on August 6, 2001. The 12th SCS Workshop was scheduled to be held in Bandung, Indonesia between 23-25 May 2002, but was postponed again to 1-3 October 2002.

CHAPTER II

INTERNAL AND EXTERNAL POLICY INPUT VARIABLES IN THE U.S. SOUTH CHINA SEA POLICY MAKING

INTRODUCTION

The Asia-Pacific is the region which covers the Spratlys Islands and the SCS area, where four of the world's major powers, namely, the United States, China, the Russian Federation, and Japan, intersect, and where "the United States has large, abiding, and continuing interests in preserving stability."¹ In addition, since 1999, India has also taken actions to support its intentions to extend strategic reach into the SCS area. The existing territorial and maritime jurisdictional disputes in this particular geographic area are likely to disturb the peace and stability of the broader Asia-Pacific region, and naturally are a grave concern of the United States. The U.S. also has critical economic and security/strategic interests in the Spratlys/SCS area.

The making of U.S. policy concerning the Spratly Islands and the SCS has been influenced profoundly by both internal and external policy input variables. Internal policy input variables in this policy-making process include U.S. economic, security/strategic, navigation, and public order at sea interests within the region. The development of an international legal regime concerning the use of the ocean and changes within the international political system are considered external policy input variables. These two sets of input variables have had a profound impact on the maritime and security policy-making of the ten countries bordering the SCS, in particular, the claimant countries such as China, the Philippines, Vietnam, and Malaysia. The SCS policies of the major claimant countries in the area have, in turn, affected U.S. policy toward the SCS territorial and maritime jurisdictional disputes.

1. "U.S. Policy in the Asia-Pacific," John S. Wolf, Coordinator for APEC, address to the Pacific Leaders Forum, Bell Harbor International Conference Center, Seattle, Washington, October 1, 1996, *U.S. Department of State Dispatch*, October 7, 1996, Vol. 7, No. 41, p. 499.

I. INTERNAL POLICY INPUT VARIABLES

In general, major U.S. national interests include:

- to preserve the survival of the United States as a free and independent nation, with its fundamental values intact and its institutions and people secure (security interest);
- to advance a healthy and growing United States economy to ensure opportunity for individual prosperity and a resource base for national endeavors at home and abroad (economic interest);
- to promote a stable and secure world, where political and economic freedom, human rights, and democratic institutions flourish (world order and ideological interests); and
- to enhance a system of healthy cooperative and politically vigorous relations with allies and friendly nations (political interest). [emphasis added].²

In September 2001, the U.S. Department of Defense issued its *Quadrennial Defense Review Report*, in which the purpose of the U.S. Armed Forces is stated as protecting and advancing U.S. national interests. The key U.S. national interests listed in the Report include:

- Ensuring U.S. security and freedom of action, including:
 - U.S. sovereignty, territorial integrity, and freedom;
 - Safety of U.S. citizens at home and abroad;
 - Protection of critical U.S. infrastructure;
- Honoring international commitments, including:
 - Security and well-being of all allies and friends;
 - Precluding hostile domination of critical areas, particularly Europe, Northeast Asia, the East Asian littoral, and the Middle East and Southwest Asia;
 - Peace and stability in the Western Hemisphere;
- Contributing to economic well-being, including:
 - Vitality and productivity of the global economy;
 - Security of international sea, air, and space, and information lines of communications;
- Access to key markets and strategic resources.³

2. Quoted in Department of Defense, Office of International Security Affairs, *United States Security Strategy for the East Asia-Pacific Region*, February 1995, p. 5.

3. U.S. Department of Defense, *Quadrennial Defense Review Report*, September 30, 2001, p. 2.

In the Asia-Pacific region and the SCS area, important U.S. national interests are in tune with America's vital national interests as listed above, which include: trade, oil business, security and strategy, and freedom of navigation. Before addressing each of these interests in order, it is worth noting U.S. security interests and the six principles underlining U.S. security policy in Asia. U.S. security interests in East Asia and the Pacific include:

- protecting the United States and its allies from attack;
- maintaining regional peace and stability;
- preserving [U.S.] political and economic stability;
- contributing to nuclear deterrence;
- fostering the growth of democracy and human rights;
- stopping the proliferation of nuclear, chemical and biological weapons, and ballistic missile systems;
- ensuring freedom of navigation; and
- reducing illicit drug trafficking.⁴

In order to advance the aforementioned security interests, U.S. military forces in East Asia and the Pacific are asked to accomplish the following fundamental security missions:

- defending Alaska, Hawaii, and the connecting lines of communications (LOCs) to the continental United States;
- protecting U.S. territories and Freely Associated States for which the U.S. has defense responsibilities;
- assisting [U.S.] allies in defense;
- maintaining the security of the LOCs through the Pacific as well as the Persian Gulf, Indian Ocean, and the East and South China Seas.⁵

There are six basic principles which guide U.S. security policy in Asia, namely:

- assurance of American engagement in Asia and the Pacific;
- a strong system of bilateral security arrangements;
- maintenance of modest but capable forward-deployed U.S. forces;
- sufficient overseas base structure to support those forces;
- [U.S.] Asian allies assuming greater responsibility for their own defense; and

4. See A Strategic Framework for the Asian Pacific Rim, Report to the Congress 1992, available at <<http://russia.shaps.hawaii.edu/security/report-92.html>>.

5. *Ibid.*

- complementary defense cooperation.⁶

The U.S. security strategy toward the Asia-Pacific region was outlined by Walter Slocombe, former Under Secretary of Defense for Policy under the Clinton Administration, and includes the following four points: (1) maintaining the vitality of bilateral treaty alliances and friendships; (2) maintaining the U.S. military forward presence in the region to promote stability; (3) promoting a stable, sound, and lasting relationship with China; and (4) taking advantage of the opportunities offered by multilateral fora such as the ARF and the NEACD⁷ “which advance transparency, resolve tensions, and improve confidence between regional powers.”⁸ U.S. “direct security interests and challenges” in the Asia-Pacific were also highlighted by Slocombe, and include:

- Asia remains a concentration of powerful economically competitive states with the world’s largest militaries, some of which are nuclear armed;
- American alliances, built on undeniable mutual interests during the Cold War, are facing new challenges and priorities for responsibility-sharing;
- Ancient rivalries, set aside in times of prosperity, may re-emerge in times of distress;
- Relations between nations with competing territorial claims are already showing strains; unresolved claims to disputed small insular areas and boundaries may prove especially dangerous;
- Deep-seated ethnic tensions could increase perceptions of unfair economic burdens; political turmoil and social unrest could result;
- Key nations in the region are going through periods of fundamental political, social, and economic transition; and
- Several nations in the region have active programs for nuclear, chemical or biological weapons and the means to deliver them, which are of concern both in themselves, and for their proliferation potential.⁹

6. *Ibid.*

7. The Northeast Asia Cooperation Dialogue was established in California in late 1993.

8. Under Secretary Walter B. Slocombe’s remarks made before the House International Relations Subcommittee on Asia and the Pacific on May 7, 1998. For the text, visit the U.S. Department of State’s home page at <<http://pdq.state.gov>>.

9. *Ibid.*

In June 2001, James A. Kelly, Assistant Secretary for East Asian and Pacific Affairs under the George W. Bush Administration, outlined the U.S. policy in East Asia and the Pacific.¹⁰ He said that Japan is “the linchpin of U.S. security strategy in Asia.” The United States hopes to build “an enhanced strategic dialogue encompassing both economic and security issues” with Japan. The United States seeks a constructive relationship with China that contributes to the promotion of [U.S.] shared interests in peace, stability, and prosperity in the region.” The United States does not view China as an enemy, but “a partner on some issues and a competitor for influence in the region.” The United States intends either to continue or to expand policies of cooperation with China on issues such as the Korean Peninsula, non-proliferation, open markets, narcotics trafficking, HIV/AIDS, environmental protection and sustainable development. Kelly also added that, the U.S. has been, and will continue to be, “clear and straightforward with China about [U.S.] interests, including [U.S.] commitment to peaceful resolution of differences with Taiwan, to the Taiwan Relations Act [TRA], and to freedom of navigation in international waters and airspace.” By referring implicitly to the EP-3 incident, Kelly emphasized that it is important not to allow the U.S.-China relations to be “damaged by miscommunication, mistrust, and misunderstanding about [the two countries’] respective intentions and objectives.”¹¹ It is clear from reading Kelly’s testimony that the U.S. will not tolerate any attempt to disrupt the vital sea lanes in the SCS area, and that the U.S. will continue to show the flag in the SCS in support of exercising the freedom of navigation and overflight in the area.

In November 2001, the U.S. Department of State reaffirmed the country’s commitment to security in Asia and the Pacific region, which is based on “the principles of shared strength, shared prosperity, and shared commitment to democratic values”.¹² To ensure shared strength, the United States will maintain a robust military presence of 100,000 troops in East Asia and the Pacific region, and will expand its security cooperation and military access in Southeast

10. “U.S. Policy in East Asia and the Pacific: Challenges and Priorities,” James A. Kelly, Assistant for East Asian and Pacific Affairs, Testimony before the Subcommittee on East Asia and the Pacific, House Committee on International Relations, June 12, 2001, available at <<http://www.usinfo.state.gov/regional/ea/easec/kelly612.htm>>.

11. *Ibid.*

12. “U.S. Commitment to Security in Asia and the Pacific Region,” International Information Programs, U.S. Department of State, November 30, 2001, available at <<http://www.usinfo.state.gov/regional/ea/easec/>>.

Asia. The United States will also strengthen ties to its allies in the region, in particular Japan, South Korea and Australia. In an effort to establish new mechanisms for transparency and confidence building, the United States will engage actively in regional security dialogues such as ARF. In addition, the United States will provide strong support for democracy and human rights in the region and promote their expansion even in the most repressive societies. Finally, the United States will work through its bilateral relations with the countries in the region and through the existing regional economic institutions, such as the Asia Pacific Economic Cooperation (APEC) forum, to accelerate the pace of trade and investment liberalization and to promote market opening.¹³

In the SCS area, the United States has abiding trade, oil, security, strategic, and navigation interests, as addressed in detail below.

A. Trade Interests

The United States has enormous trade and economic interests in the East Asia and Pacific region. During the 1970s and 1980s, U.S. exports to the Asia-Pacific region grew twice as fast as exports to the European Community.¹⁴ In 1995, U.S. two-way trade with Asia accounted for more than 36 percent of total American world trade.¹⁵ By 2001, U.S. two-way trade with East Asia and the Pacific region reached nearly US\$500 billion.¹⁶ The East Asia and Pacific region has surpassed Western Europe to become the largest regional trading partner of the United States, both as a supplier of U.S. imports and as a market for its exports.¹⁷ Today, the East Asia and Pacific region is the largest consumer market in the world, accounting already for more than half of all U.S. trade and supporting millions of American jobs.¹⁸ As far as Southeast Asia is concerned, the ASEAN stands as America's fourth-largest trading partner, both in terms of imports and exports. Since 1990, total U.S. trade

13. *Ibid.*

14. *Supra* note 8, p. 6.

15. *Ibid.*

16. "U.S. Policy in East Asia and the Pacific: Challenges and Priorities," *supra* note 10.

17. U.S. Economic Relations With East Asia and the Pacific, Fact Sheet released by the Bureau of East Asian and Pacific Affairs, U.S. Department of State, October 26, 1998, available at <http://www.state.gov/www/regions/eap/fs-us-eap_econ_rels_981026.html>.

18. "U.S.-East Asia Strength and Prosperity in the 21st Century," President Clinton's remarks to the Pacific Basin Economic Council, Washington, D.C., May 20, 1996, see *U.S. Department of State Dispatch*, Vol. 7, No. 22, May 27, 1996, p. 261.

with member countries of the ASEAN has grown at an average annual rate of 15 percent.¹⁹ The United States is the leading export market for the Philippines, Singapore, and Thailand and is the second-largest export market for Malaysia and Indonesia.²⁰ U.S. two-way trade with ASEAN reached U.S. \$84 billion in 1994 — a 15 percent increase over 1993.²¹ In 1995, the two-way trade reached U.S.\$101 billion, having expanded nearly 50percent over the past two years. By 1999, the two-way trade had reached to U.S. \$117.5 billion.²² In 1995, U.S. investment in ASEAN was about U.S. \$20 billion. In July 1996, the investment exceeded U.S. \$25 billion.²³ By 1997, U.S. direct investment in ASEAN has grown to approximately U.S. \$38 billion.²⁴

Based upon the aforementioned trade figures and the important trade relations developed between the United States and the countries in the region over the past several years, there can be no doubt that once the stability and peace of the Asia-Pacific region were disrupted by the territorial and jurisdictional disputes in the Spratlys/SCS area, U.S. critical economic interests would also be seriously affected. Take oil imports as an example. In 1992, the Asia-Pacific region's (excluding the United States) demand for oil was 14.5 million barrels per day, which was larger than that of Europe, and which made the Asia-Pacific the second largest oil consuming region after North America. Seventy per cent of the Asia-Pacific region's oil imports came from the Persian Gulf. By the turn of the century, it was expected that the percentage of oil imports from the Persian Gulf would increase to ninety percent.²⁵ If the SLOCs were cut by armed conflict erupting in the Spratlys/SCS area as a result of territorial and/or jurisdictional disputes, the economic interests of the countries in the Asia-Pacific region, including the United States, would be adversely affected. Accordingly, maintaining peace and stability in the Spratlys/SCS area is very impor-

19. U.S. Economic Relations with East Asia and the Pacific, *supra* note 17.

20. *Ibid.*

21. Secretary of State Christopher's remarks made at the Seven-Plus-One Session of the ASEAN Post-Ministerial Conference, Bandar Seri Begawan, Brunei, August 2, 1995, see *U.S. Department of State Dispatch*, Vol. 6, No. 32, August 7, 1995, p. 612.

22. See "U.S. Trade by Commodity with ASEAN (10)," U.S. Commodity Trade by Geographic Area (1995-99), U.S. Foreign Trade Highlights, U.S. Department of Commerce, available at <<http://www.ita/doc.gov/td/industry/otea/usfth/tabcom.html>>.

23. *Supra* note 22.

24. U.S. Economic Relations with East Asia and the Pacific, *supra* note 17.

25. *Supra* note 2, p. 7.

tant to help preserve U.S. economic interests in the Asia-Pacific region.

B. Oil Interests

Beginning in the early 1990s, U.S. oil companies, eyeing the oil reserves in the Spratly/SCS area, have invested money and technologies through signing bilateral oil exploration/exploitation contracts with countries such as China, the Philippines, and Vietnam to bring oil ashore from near or in the disputed waters of the Spratly Islands in the SCS area. In spite of the U.S. government's warnings, through which the U.S. oil companies were told that they were on their own in assuming the risk of exploration/exploitation in disputed waters, the investment and participation of U.S. oil companies in the area have steadily increased since the early 1990s.

On May 8, 1992, the U.S. Crestone Energy Corporation signed a contract with the Chinese National Offshore Oil Company to explore oil and gas resources in an area of the Spratly Islands in the southwestern part of the SCS. The contract area, Wan'an Bei Block WAB21, is located to the southwest on Nanwei (Spratly Island).²⁶ In February 1993, it was reported that U.S. oil companies, including Mobil, Unocal, Amoco, Exxon, Conoco and Marathon, sent teams to Hanoi, Vietnam to talk about the possibilities of obtaining exploration rights in Vietnam's official fields, which could possibly put them into the middle of a territorial dispute between Vietnam and China in the Spratly Islands area.²⁷ In May 1994, Vietnam leased a block containing the promising Blue Dragon structure to a consortium that included the U.S. oil company Mobil. The structure was located just west of the Crestone contract area and within the Chinese claimed waters. Vietnam was also negotiating with Conoco Inc., a subsidiary of Du Pont Co. of the U.S. for two blocks in the Spratly Islands area, which overlapped China's Crestone concession.²⁸ In June 1994, the Philippines awarded contracts to the U.S. oil company Vaalco Energy and the Philippines' Alcorn Petroleum for drilling in the Recto Bank (Nansan in Chinese) of the disputed

26. "Beijing and Hanoi Play with Fire in the SCS," *The Asian Wall Street Journal*, July 20, 1994, p. 5. For details of the contract, see the letter and the attached map included in Proceeding of the Third Workshop on Managing Potential Conflicts in the SCS, Yogyakarta, Indonesia, 29 June - 2 July 1992, pp. 183-185.

27. "Stampede for Oil: U.S. Firms Rush to Explore Vietnamese Waters," *Far Eastern Economic Review*, February 25, 1993, p. 48.

28. "Beijing and Hanoi Play with Fire in the SCS," *op. cit.*, p. 5.

Spratly Islands area.²⁹ In July 1994, it was reported that the U.S. oil companies Mobil, Atlantic Richfield, and Occidental Petroleum had started exploration activities in Vietnam's offshore waters near the Spratly Islands, which were also claimed by China.³⁰ In April 1996, Vietnam leased two oil exploration blocks in the disputed waters in the Spratly Islands to the U.S. oil company Conoco, which covered half the zone leased by China to Crestone in May 1992.³¹ Since 1999, a Vietnamese-Russian venture has operated the *Dai Hung* oilfield, located near the disputed Wan'an Bei Block WAB 21 in the Spratly archipelago and was leased by China to the U.S. oil company Crestone in 1992.

It is not clear with regard to the degree to which the U.S. oil companies' involvement in the oil exploration/exploitation activities in the disputed waters in the SCS had affected decision-making regarding the official U.S. position on the Spratly Islands disputes and the SCS issues. What is clear is that an eruption of armed conflict between the disputed countries in the area would not be in tune with the interests of U.S. oil businesses and that the U.S. government is expected to protect American commercial interests overseas.

C. Security and Strategic Interests

As far as U.S. security and strategic interests are concerned, it has been America's policy to preserve peace and stability in the Asia-Pacific region and the Spratlys/SCS area. The United States is committed to maintain approximately 100,000 troops in the Asia-Pacific to help keep peace and stability in the region.³² In addition, the United States has six security commitments in the Asia-Pacific region, including security treaties with Japan, the Republic of Korea, the Republic of the Philippines, Thailand, and the Compact of Free Association with the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.³³ If dis-

29. See "Flash Points: Spratly Islands," *Jane's Defense Weekly*, July 9, 1994, p. 18; and "Troubled Waters: Philippine Offshore Oil Search Roils China," *Far Eastern Economic Review*, June 30, 1994, p. 20.

30. *The China Post*, July 6, 1994, p. 1.

31. "Vietnam-China: Oil Search Fuels Rising Tension in SCS," *Inter Press Service*, March 21, 1997.

32. "The Enduring Importance of American Engagement in the Asia-Pacific Region," Anthony Lake, Assistant to President for National Security Affairs, remarks to the Japan-American Society, Washington, D.C., October 23, 1996, in *U.S. Department of State Dispatch*, Vol. 7, No. 45, November 4, 1996, p. 545.

33. For more information, see *supra* note 2, p. 6 and pp. 10-12.

putes over ownership of the islands or the right to explore and exploit marine resources were to escalate into armed conflicts in the Spratlys/SCS area, the United States would be forced to take actions to maintain peace and stability in the region. The United States would also be asked to increase its military presence in the SCS area, including emergency deployment of U.S. naval vessels and combat aircraft, as a demonstration of America's commitment to security in Southeast Asia, under the following scenarios:

- A Chinese attempt to interfere with maritime traffic on the South China Sea SLOCs, perhaps in an effort to coerce the United States, Japan, or ASEAN into accepting Chinese political demands;
- A Chinese effort to forcibly establish and maintain control over all or most of the Spratly Islands. Such an operation could feature the threat or use of force against an ASEAN state, either to compel acceptance of Chinese demands or to defeat opposing military forces;
- Continuation or expansion of China's "salami tactics" to gradually assert control of more territory in the disputed areas – for instance, the occupation of other reefs or the construction of new structures in already claimed reefs;
- Conflict triggered by energy exploration or exploitation activity, fishery disputes, accidents or miscalculations, regional tensions, or provocative actions by one or more parties to the dispute;
- More ambiguous uses of force by China, including selective harassment and intimidation of regional states in the guise of enforcement of Chinese maritime claims, protection of fishermen, anti-piracy or anti-smuggling operations, or peacekeeping or order-keeping operations in the event of a breakdown of domestic or international order in the region.³⁴

The U.S. strategic and security interests in the SCS would also be affected by the increase of China's capability to project its military power to the SCS area. China has made a substantial investment in modernization of its surface and subsurface naval forces. In 1996, China ordered two *Sovremenny*-class destroyers from Russia,

34. Richard Sokolsky, Angel Rabasa, and C.R. Neu, *The Role of Southeast Asia in U.S. Strategy Toward China* (Santa Monica, Rand, 2000), pp. 15-17. Cited in Zalmay Khalilzad, et al., *The United States and Asia: Toward a New U.S. Strategy and Force Posture* (Santa Monica, Rand, 2001), pp. 36-37.

which were delivered to China in February 2000 and January 2001 respectively. The destroyer carries *Sunburn* supersonic missiles that pose a major threat to the U.S. Pacific fleet.³⁵ It was also reported that China is now building its own nuclear-powered strategic submarines after obtaining the needed technology from Russia.³⁶ The short-to-medium-range cruise missile system, such as *Silkworm* antiship cruise missiles installations on the Chinese occupied Woody Island of the Paracels in the SCS, could pose a threat to American civilian and military shipping in the nearby area. It is believed that the Chinese navy's areas of operations in the SCS will be further extended once the construction of its first light aircraft carrier is completed and begins to serve in the year 2006.³⁷ The U.S. military operations and strategic planning in Southeast Asia will surely be affected by China's naval expansion in the SCS area.

D. Navigation Interests

It is very likely that U.S. navigation interests would also be affected by any conflict arising from the territorial and jurisdiction disputes in the Spratly/SCS area. Under the 1982 LOSC,³⁸ the disputed countries in the area are entitled the rights to claim certain part of the waters in the SCS as their respective internal waters, territorial seas, contiguous zones, exclusive economic zones (EEZs), continental shelves, and archipelagic waters. In addition, certain parts of the waters in the area have been claimed as internal waters based upon historic grounds. The U.S. right to exercise freedom of navigation would be restricted if armed conflict were to erupt in the Spratlys/SCS area or if excessive unilateral claims of maritime zones were made by the countries concerned, based upon their territorial claims. For instance, U.S. navigation rights in the Gulf of Tonkin and the Gulf of Thailand were affected by Vietnam's declarations that certain parts of the gulfs are its historic waters, and therefore, are considered as Hanoi's internal waters where

35. *China Times* (Taipei), January 19, 2001, p. 11.

36. *United Daily* (Taipei), January 7, 2001, p. 11; see also *Jane's Defence Weekly*, February 18, 1998, p. 37.

37. *United Daily* (Taipei), March 14, 2001, p. 13.

38. The United Nations Convention on the Law of the Sea, opened for signature Dec. 10, 1982, 21 I.L.M. 1261 (1982), reprinted in *The Law of the Sea: United Nations Convention on the Law of the Sea with Index and Final Act of the Third United Nations Conference on the Law of the Sea*, UN Sales No. E.83.V.5 (1983). As of September 10, 2001, 137 countries had ratified this Convention. A list of ratifications is available at <http://www.un.org/Depts/Treaty/final/ts2/newfiles/part_boo/xxi_6.html>.

the United States enjoys no navigation rights at all.³⁹ U.S. navigation interests were restricted because of the Philippines' declaration that "the concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines, and removes straits connecting these waters within the economic zone or high sea from the rights of foreign vessels to transit passage for international navigations."⁴⁰ In February 1996, the Clinton Administration decided not to support the Southeast Asia Nuclear Weapon Free Zone treaty, mainly because of its concern over "the inclusion of Exclusive Economic Zones, . . . and continental shelves in the zone, which raises questions about the consistency of the treaty with high seas freedoms (in particular freedom of navigation) and other principles embodied in the UN Convention on the Law of the Sea."⁴¹ In addition, the United States is concerned about the uncertain situation in the SCS, where continental shelves and EEZs have never been delimited because of territorial disputes.⁴²

One commentator argued in 1995 that tensions in the Spratly Islands posed no threat to navigation in the SCS area, mainly because "[m]ost important SCS shipping routes pass well west of the Spratly Islands. . . . The only significant shipping route east of the Spratly Islands is the Jakarta-Manila route that hugs the coasts of Borneo and Palawan."⁴³ However, John H. Noer presents a different view, by pointing out that blockage of shipping lanes in the SCS area "could immediately and directly disrupt the U.S. economy."⁴⁴ He suggested that denial of the SLOCs passing the Spratly Islands to merchant shipping in the SCS would disrupt world shipping markets. Freight rates around the world would be affected. American

39. See Statement of 12 November 1982 by the Government of the Socialist Republic of Vietnam on the Territorial Sea Baselines of Vietnam, in United Nations, *The Law of the Sea: Current Developments in State Practice*, New York, 1987, p. 143.

40. See The Philippines: Declarations made upon Signature and Confirmed upon Ratification of the UN Convention on the Law of the Sea, 1982, 10 December 1982 and 8 May 1984, in E.D. Brown, *The International Law of the Sea (Vol. II): Documents, Cases and Tables* (Singapore: Dartmouth, 1994), pp. 100-101.

41. "Southeast Asia Regional Security Issues: Opportunities for Peace, Stability, and Prosperity," Winston Lord, Assistant Secretary for East Asian and Pacific Affairs, Statement before the Asia and Pacific Subcommittee of the House International Relations Committee, Washington, D.C., May 30, 1996, p. 271.

42. *Ibid.*

43. Daniel J. Dzurek, "China Occupies Mischief Reef in Latest Spratly Gambit," in IBRU Boundary and Security Bulletin, April 1995, p. 66.

44. John H. Noer, Southeast Asian Chokepoints: Keeping Sea Lines of Communication Open, *Strategic Forum* paper No. 98, December 1996, Institute for National Strategic Studies, National Defense University.

imports and exports would be affected by the added costs in merchant shipping.⁴⁵ Alternate routes are available in the SCS area: ships denied access to the Malacca Straits might use the Sunda Straits, the Lombok Straits, and the Straits of Makassar. However, John H. Noer warns that in practice,

blockage of these SLOCs would matter a great deal. Nearly half the world fleet would be required to sail farther, generating a substantial increase in the requirement for vessel capacity. All excess capacity of the world fleet might be absorbed, depending on the number of straits closed and how long they remained closed. The effect would be strongest for crude oil shipment and dry bulk such as iron ore and coal.⁴⁶

Noer cites the experience of the closure of the Suez Canal as an example, suggesting that a disruption of shipping in the SCS might increase freight rates by as much as five times. In addition, war-related uncertainty over the Spratly Islands might cause maritime insurers to either increase rates or deny coverage in the region. As a result, shippers might be forced to reroute shipping via safer sea lanes, which in turn would increase shipping distance, sailing time, and shipping costs. Regional and international trade would thus be affected.⁴⁷

II. EXTERNAL POLICY INPUT VARIABLES

In addition to the internal policy input variables identified above, the U.S. SCS policy decision-making process has also been influenced by external policy input variables, such as the development of the claimants' SCS policies, the development of the new ocean regime and its impact on sovereignty and maritime jurisdictional claims, and the end of the Cold War and its impact on geopolitical and strategic situations in the SCS area. These variables have been and continue to be the main reasons for tensions in the Spratly Islands and elsewhere in the SCS. The national interests of the United States, in particular promoting trade, ensuring the exercise of the freedom of navigation, and maintaining peace and stability in the SCS area, could possibly be affected if territorial or maritime jurisdictional disputes between or among the claimants were esca-

45. *Ibid.*

46. *Ibid.*

47. *Ibid.*

lated into serious armed conflicts. Once that occurs, the U.S. government would be forced to respond.

A. Scramble for Offshore Petroleum Resources

Except for the brief periods when France and Japan took action to occupy the Spratly and Paracel Islands during the 1930s,⁴⁸ and until the mid-1960s, there has been relative peace and stability in the Spratly Islands and the SCS area. But since the publication of the CCOP report in 1969, which suggested that there were hydrocarbon resources under the Yellow Sea, the East China Sea, and implicitly the SCS,⁴⁹ the Spratly Islands began to attract interest and attention from governments of littoral countries in the area, in particular, the Philippines, Vietnam, and Malaysia. The oil crisis of 1973 hastened most of the littoral countries' efforts to secure the area's resource potentials.

Military troops were sent by the Philippines, Vietnam, and Malaysia to occupy the insular features of the Spratly Islands group in vigorous pursuance of their claims. The Philippines occupied Nanshan Island and Flat Island in 1970, Thitu Island, Loaita Island, Northeast Cay, and West York Island in 1971, Panata in 1978, and Commodore Reef in 1980. Vietnam occupied Nam Yit Island, Southwest Cay, Dunqian Shazhou, Spratly Island, Sin Cowe Island, and Amboyne Cay in 1973, and Ranqing Shazhou, Central Reef, and Pearson Reef in 1978. Malaysia occupied Swallow Reef and Ardasier Reef in 1977, and Mariveles Reef in 1979.⁵⁰ All of these occupied islands belong to the Spratly Islands group located in the southern part of the SCS. In 1974, the Chinese military expelled Vietnamese forces from the Paracel Islands they occupied.⁵¹

48. For discussion, see Lu Ning, *Flashpoint Spratlys* (Singapore: Dolphin Trade Press Pte. Ltd., 1995), pp. 22-25.

49. The Committee for the Coordination of Joint Prospecting for Mineral Resources in Asian Offshore (CCOP) is one of the committees under the UN Economic Commission for Asia and the Far East (ECAFE). For the 1969 report, see K.O. Emery, et al., "Geographical Structures and Some Water Characteristics of the East China Sea and the Yellow Sea," Technical Advisory Report, *Technical Bulletin*, No. 2, 1969, pp. 3-43.

50. See Pan Shiyong, "The Nansha Islands: A Chinese Point of View," *Window*, September 3, 1993, table on p. 29.

51. For detail account, see Marwyn S. Samuels, *Contest for the SCS* (New York and London: Methuen, 1982), ch. 6, pp. 98 - 117; David Muller, *China's Emergence as a Maritime Power* (Boulder: Westview, 1983), pp. 152-154; Gerald Segal, *Defending China* (New York & London: Oxford University Press, 1985), pp. 197-210; Chi-kin Lo, *China's Policy Towards Territorial Disputes: The Case of the SCS Islands* (New York &

Domestic legislative measures were also taken by the Philippines, Vietnam, and Malaysia to consolidate their respective sovereignty and maritime jurisdictional claims. In December 1979, for instance, Malaysia published a map showing its territorial waters and continental shelf boundaries.⁵² In May 1980, the country also proclaimed a 200-nautical-mile EEZ.⁵³ In June 1978, the Philippines proclaimed Presidential Decree No. 1596, in which Manila declared 33 islands, cays, shoals and reefs contained in a delimited area (known as Kalayaan) of the Spratly Islands to be Philippine territory.⁵⁴ Also in June 1978, under Presidential Decree No. 1599, the Philippines proclaimed a 200-nautical mile EEZ, claiming sovereign rights over this economic zone for exploration, exploitation, conservation and management of all natural resources, including the seabed and its subsoil.⁵⁵ In May 1977, after approval by its Standing Committee of the National Assembly, Vietnam declared the limits of the country's territorial sea, contiguous zone, exclusive economic zone, and the continental shelf.⁵⁶ Although no maritime legislative measures had ever been taken by China to bolster its sovereignty and jurisdictional claims in the SCS area during the 1970s, military actions were taken to route Vietnamese troops from the Paracel Islands they occupied. In addition, the Chinese Ministry of Foreign Affairs reacted strongly to a white paper entitled "Vietnam's Sovereignty over Hoang Sa (Paracel Islands) and Truong Sa (Spratly Islands) Archipelagoes," issued in September 1979 by the

London: Routledge, 1989), pp. 53-60; Lu Ning, *Flashpoint Spratlys* (Singapore: Dolphin Trade Press Pte Ltd., 1995), pp. 74-86; Greg Austin, *China's Ocean Frontier: International Law, Military Force and National Development* (St. Lenards, Australia: Allen & Unwin Australia Pty Ltd., 1998), pp. 73-77.

52. See R. Haller-Trost, "Some Comments on the Territorial Sea and Continental Shelf Map of Malaysia," in *Ocean Yearbook 12*, edited by Elisabeth Mann Borgese (Chicago and London: The University of Chicago Press, 1996), pp. 316-333; Daniel J. Dzurek, "Boundary and Resource Disputes in the SCS," in *Ocean Yearbook 5*, edited by Elisabeth Mann Borgese and Norton Ginsburg (Chicago and London: The University of Chicago Press, 1985), pp. 282; and Maritime Claims of Coastal States, in *Maritime Claims Manual*, U.S. Department of Defense, document number DoD 2005 1-M, dated January 1997, pp. 2-294, available at <<http://web7.whs.osd.mi/html/20051m.htm>>.

53. Daniel J. Dzurek, "Boundary and Resource Disputes in the SCS" and *Maritime Claims Manual*, *ibid.*

54. The decree can be found in Pacifico A. Castro, ed., *The Philippines and the Law of the Sea* (Manila, Philippines, Foreign Service Institute, 1983), pp. 38-39.

55. For the decree, see *ibid.*, pp. 41-44.

56. See Myron H. Nordquist and Choon Ho Park, eds., *North America and Asia-Pacific and the Development of the Law of the Sea: Treaties and National Legislation* (Dobbs Ferry, New York: Oceana Publications, 1981), pp. 4-5.

Vietnamese Ministry of Foreign Affairs. The Ministry published a document in January 1980 to prove China's "indisputable sovereignty over Xisha (Paracel Islands) and Nansha (Spratly Islands)" and to explode "the fallaciousness of the Vietnamese authorities' claims".⁵⁷

Seeking and competing for offshore petroleum resources under the waters adjacent to the disputed islands in the SCS remains one of the potential triggers for maritime conflicts in the SCS. Recent developments concerning exploration and exploitation activities in the area and conflicts resulted from conducting the activities by the claimant countries will be addressed later.

B. The Establishment of A New Ocean Regime

The convening of the Third United Nations Conference on the Law of the Sea (UNCLOS III) in December 1973 and the adoption of the LOSC in April 1982⁵⁸ also had a great impact on maritime politics in the SCS area. Originally, the 1982 LOSC was drafted for the purpose of establishing a new ocean regime. It was generally expected that this "Charter for the Oceans" would help regulate coastal states' behaviors in matters dealing with different uses of the oceans, and then help minimize maritime conflicts, and maintain and improve public order at sea. Ironically, however, the adopted Convention has become one of the major reasons for coastal states' taking actions and counter-actions⁵⁹ in the SCS area to bolster their sovereignty and maritime jurisdictional claims. As a result, the preexisting maritime tensions in the SCS escalated.

The LOSC was adopted on April 30, 1982, and opened for signature at Montego Bay, Jamaica on December 10 of the same year.

57. "China's Indisputable Sovereignty Over the Xisha and Nansha Islands," *Beijing Review*, February 18, 1980, pp. 15-24.

58. The first (organizational) session of the UNCLOS III was held in New York between December 3 and 14, 1973. The twelfth (signing) session was held in Montego Bay, Jamaica, December 6-10, 1982.

59. A variety of these actions and/or counter-actions are enumerated by Mark J. Valencia in a paper studying the relationship between China and the SCS disputes, which included: "using military force; 'showing the flag'; occupying and fortifying islets; building up submerged features; establishing structures and markers on islands; establishing scientific research stations supposedly mandated by international organizations; enacting laws; incorporating the area into near provinces; publicizing maps showing claims; allowing tourists and journalists to visit 'their' islands; and granting concessions to oil companies in claimed areas." See Mark J. Valencia, *China and the SCS Disputes, Adelphi Paper 298*, the International Institute for Strategic Studies, Oxford University, 1995, p. 8.

Numerous new concepts relating to the use and utilization of the oceans were developed in the Convention such as "transit passage," "archipelagic waters," "Exclusive Economic Zone," and "International Sea-Bed Authority," to name a few. Despite the refusal of a few states (such as the United States, Great Britain, and West Germany)⁶⁰ to sign the Convention because of disagreements over the deep sea-bed mining provisions, the substantive rules of the Convention were largely endorsed by most states in their respective national legislation before it finally entered into force on November 16, 1994.⁶¹

The 1982 LOSC permits coastal states to establish EEZs that comprise the seas and natural resources, living and non-living, within 200 nautical miles of their coastlines.⁶² Under Article 121, except rocks which "cannot sustain human habitation or economic life of their own,"⁶³ and therefore "shall have no exclusive economic zones or continental shelf,"⁶⁴ an island, defined as "a naturally formed area of land, surrounded by water, which is above water at high tide,"⁶⁵ can have its own territorial sea, contiguous zone, EEZ, and continental shelf.⁶⁶ Mainly because of these rulings, a large portion of the waters in the SCS is now included in the new EEZ and continental shelf boundaries of a number of SCS littoral states. The problems of maritime boundary demarcation and overlapping EEZ claims also arose, given the fact that the SCS is a semi-

60. Mainly because Part XI of the 1982 LOSC was substantively revised in accordance with the deep sea-bed policy demands from the industrialized countries, in particular, the United States, and because the Agreement relating to the Implementation of Part XI of the 1982 LOSC was adopted by the UN General Assembly on July 28, 1994, the U.S. government transmitted the 1982 LOSC and the 1994 Agreement to its Senate in October 1994 for consent to accede to the Convention and to ratify the 1994 Agreement. While the U.S. accession to the 1982 LOSC is still pending, major industrialized countries such as Germany, France, the United Kingdom, and Belgium ratified or acceded to the 1982 LOSC on October 14, 1994, April 11, 1996, July 25, 1997, and November 13, 1998, respectively. See Table showing the current status of the United Nations Convention on the Law of the Sea and of the Agreement relating to the implementation of Part XI of the Convention, available at <<http://www.un.org/Depts/los/los94st.htm>>.

61. Under Article 308, "the Convention shall enter into force 12 months after the date of deposit of the sixtieth instrument of ratification or accession." The sixtieth country (Guyana) ratified the Convention was on November 16, 1993. Accordingly, the 1982 LOSC entered into force on November 16, 1994.

62. See Article 56 of the Convention.

63. Article 121(3) of the Convention.

64. *Ibid.*

65. Article 121(1).

66. Article 121(2).

enclosed sea.⁶⁷ Moreover, based upon the ruling provided in the Convention that a total of 1,500 square kilometres of territorial sea (based on the calculation of 12 nautical miles of territorial waters) and some 430,000 square kilometres of maritime economic zone (calculated on the basis of 200 nautical miles of EEZ) can legally be claimed by a country that owns an island,⁶⁸ actions such as landing troops or setting up sovereignty markers on unoccupied features were taken by the claimant countries in the area to consolidate their territorial and maritime jurisdictional claims.

It should be noted here that most SCS littoral states, namely China, Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam, signed the document on December 10, 1982, the date the Convention was opened for signature.⁶⁹ However, right before signing the 1982 LOSC, the Vietnamese government issued a statement on territorial sea baselines on November 12, 1982, in which Hanoi announced the coordinates of the points which were connected as straight baselines from which the territorial sea of its continental territory was to be measured. Vietnam also declared, *inter alia*, that the maritime boundary line in the Gulf of Tonkin⁷⁰ between China and Vietnam should be delineated in accordance with the June 26, 1887 Convention of frontier boundaries signed between France and the Qing Dynasty of China. The Convention states that the part of the Tonkin Gulf appertaining to Vietnam constituted its historic waters and is subject to the juridical regime of internal waters of the country, and that the Paracel and Spratly Islands belong to Vietnam, whose baselines for measuring the breadth of the territorial sea would be drawn at another time.⁷¹ On November 28, 1982, China protested the Vietnamese claims, stating that "the so-called boundary line in the Beibu Gulf as asserted by the Vietnamese Government is illegal and null and void," and reit-

67. Article 122 of the Convention defines the term "enclosed or semi-enclosed sea" as "a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States."

68. Provided that the island passes the test stated in paragraph 3 of Article 121.

69. Brunei signed the Convention on December 5, 1984. Taiwan is not a member of the United Nations and therefore was unable to sign the document.

70. The Gulf of Bac Bo in Vietnamese and the Beibu Gulf in Chinese.

71. See Statement of 12 November 1982 by the Government of the Socialist Republic of Vietnam on the territorial sea baselines of Viet Nam, which can be found in *The Law of the Sea: Current Developments in State Practice*, published by the Office of the Special Representative of the Secretary-General for the Law of the Sea, United Nations (New York: United Nations, 1987), pp. 143-144.

erating that "Xisha Islands and Nansha Islands are an inalienable part of China's sacred territory."⁷² The dispute between China and Vietnam over the maritime boundary in the Gulf of Tonkin was settled after the two countries concluded the agreements on the demarcation of territorial waters, the exclusive economic zone and continental shelf, and fishery cooperation in the Gulf of Tonkin on December 25, 2000.⁷³

France, a non-SCS country, also submitted a note to the Secretary-General of the United Nations to present its view concerning the drawing of the baselines of Vietnam's territorial sea and its historical waters claim in the Gulf of Tonkin.⁷⁴ The French government stated that "the drawing of the baseline of Viet Nam's territorial sea between points A1 and A7 is at variance with the well-established rules of international law applicable to the matter,"⁷⁵ and therefore, "that segment of the baseline cannot be invoked *vis-à-vis* the French Government."⁷⁶ The French government also questioned Vietnam's historical waters claim in the Gulf of Tonkin.⁷⁷ Other countries in the SCS area, in particular Thailand and Singapore, also issued statements to challenge the aforementioned Vietnamese claims on November 22, 1985⁷⁸ and December 5, 1986,⁷⁹ respectively.

During the 1980s, no SCS littoral states ratified the 1982 LOSC, except the two archipelagic states, the Philippines and Indonesia. The declaration, made by the government of the Philippines upon signature and confirmed upon ratification of the 1982 LOSC on December 10, 1982 and May 8, 1984, however, was protested by several countries, including China, Vietnam, the former USSR, By-

72. For the statement by China, see *The Law of the Sea: Current Developments in State Practice*, *ibid.*, p. 145.

73. "China, Viet Nam Sign Agreements," *Beijing Review*, Vol. 44, No. 2, January 11, 2001, pp. 9-10.

74. For Note of France, see *The Law of the Sea: Current Developments in State Practice*, *ibid.*, p. 146.

75. *Ibid.*

76. *Ibid.*

77. *Ibid.*

78. For the Statement by the Ministry of Foreign Affairs of Thailand on the Vietnamese claims concerning the so-called historical waters and the drawing of baselines, see *The Law of the Sea: Current Developments in State Practice*, *ibid.*, pp. 147-148.

79. For the Note dated 5 December 1986 setting out the position of the Government of the Republic of Singapore on the Vietnamese claims concerning the so-called historical waters and the drawing of baselines, see *The Law of the Sea: Current Developments in State Practice No. II*, published by Office for Ocean Affairs and the Law of the Sea, United Nations (New York: United Nations, 1989), pp. 84-85.

Belorussia, the former Czechoslovakia, the Ukraine, Bulgaria, Australia, and the United States.⁸⁰ China and Vietnam protested the declaration mainly because the Philippines claimed that it exercised sovereign authority over the Kalayaan Islands, which are part of the Spratly Islands also claimed by China and Vietnam. The former Soviet Union, Byelorussia, the Ukraine, the former Czechoslovakia, Bulgaria, Australia, and the United States objected to the declaration because it stated that the concept of archipelagic waters in the 1982 LOSC was similar to the concept of internal waters under the Constitution of the Philippines.⁸¹

In addition to the aforementioned national legislative actions, policy statements, or protests, there were other actions taken by the claimant countries in the SCS area to uphold sovereignty and maritime jurisdictional claims, including landing troops and setting up sovereignty markers on unoccupied features in the Spratly Islands group and arresting foreign fishermen operating in the waters claimed. In 1988, Chinese troops, for the first time moved into the Spratly Islands group, occupying Fiery Cross/NW Investigator Reef, Johnson Reef, Dongmen Island, Graven Reef, Subi Reef and Guanton Reef. Vietnamese troops landed on Barque Canada Reef in 1987, West Reef, Tennent Reef, Ladd Reef, Discovery Great Reef, East Reef, Alison Reef, Cornwallis Reef, Petley Reef, South Reef, and Collins Reef in 1988, Qiong Reef and Bombay Castle in 1989, Price of Wales Bank and Vanguard Bank in 1990, and Prince Consort Bank in 1991.⁸² The active physical occupation of the features of the Spratly Islands group resulted in a naval skirmish between China and Vietnam in March 1988. Although Malaysia did not take action to occupy more new features in the Spratly

80. For the declaration, see E.D. Brown, *The International Law of the Sea Volume II: Documents, Cases and Tables* (England: Dartmouth Publishing Company Limited, 1994), pp. 100-101. For objections to the declaration, see United Nations, Multilateral Treaties Deposited 866-868, cited in J. Ashley Roach and Robert W. Smith, *United States Responses to Excessive Maritime Claims*, second edition (The Hague/Boston/London: Martinus Nijhoff Publishers, 1996), p. 403; Diplomatic Note delivered January 29, 1986, from American Embassy Manila, pursuant to instructions in State Department telegram 115912, April 17, 1985. American Embassy Manila telegram 03261, January 29, 1986, cited in *United States Responses to Excessive Maritime Claims*, p. 403; *The International Law of the Sea Volume II: Documents, Cases and Table*, 101-103; and *The Law of the Sea: Declarations with respect to the United Nations Convention on the Law of the Sea and to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea* (United Nations Publication, Sales No. E.97.V.3).

81. *Ibid.*

82. Pan Shiying, *supra* note 50, p. 29.

Islands group, its government announced in 1991 that Swallow Reef (Terumbu Layang Layang), garrisoned by Malaysian troops, was to be made into a tourist resort with the completion of a hotel and an airstrip capable of handling small civilian and military aircraft.⁸³

The establishment of a new ocean regime and the adoption of the 1982 LOSC indeed had a profound impact on national ocean policies and regional maritime politics in the SCS. National ratifications of the 1982 LOSC and the follow-up policy measures taken by the countries in the SCS area to implement the convention have complicated the sovereignty and maritime jurisdictional disputes and made the settlement of the disputes more difficult. As argued by Allan Shephard, "the EEZ concept has given a spurious legitimacy to the phenomenon of 'creeping annexation' carried out via diplomatic proclamations and occasionally followed up by physical occupation. In this way the LOSC has exacerbated preexisting maritime tension in the SCS."⁸⁴ Bob Catley and Makmur Keliat also point out that the LOSC "almost certainly intensified competition for the islands by recognizing clearly the rights to EEZ without setting out just as clearly how disputes over such zones might be as certainly resolved".⁸⁵ It is clear that the making of U.S. policy toward the territorial and jurisdictional disputes in the SCS has been and will continue to be influenced by these external policy input variables.

C. Geopolitical and Strategic Changes in Southeast Asia

The collapse of the Soviet Empire in late 1980s signified the end of the Cold War. The international system was thus transformed from bipolar to multipolar, and the United States became the only superpower in the world. In response to the end of the Cold War, the United States planned to reduce its forward deployed military forces in the East Asia-Pacific region throughout the 1990s. Starting in 1991, the United States withdrew its forces from Subic Bay Naval Base and Clark Air Base in the Philippines. The withdrawal of U.S. forces from the Philippines was completed

83. "Malaysia Plans Airstrip on Disputed Atoll," *Far Eastern Economic Review*, September 12, 1991, p. 14.

84. Allen Shephard, "Maritime Tensions in the SCS and the Neighborhood: Some Solutions," *Studies in Conflict and Terrorism*, Vol. 17, 1993, p. 185.

85. Bob Catley and Makmur Keliat, *Spratlys: The Dispute in the SCS* (Aldershot/Brookfield USA/Singapore/Sydney: Ashgate Publishing Limited, 1997), p. 68.

on November 24, 1992.⁸⁶ The former Soviet Union also withdrew its forces from Cam Ranh Bay in Vietnam during the very early 1990s.

As a result of the end of the Cold War and the follow-up reduction of the U.S. and Soviet military presence in the SCS area, it was speculated that a new “power vacuum” situation had emerged and that China was considered the only country having both the capability and the intention to become a dominant power in the SCS area. China’s actions taken in the Spratly Islands during the late 1980s and early 1990s seemed to reinforce the perception of a “China threat”.

In addition, there was a growing uncertainty and sense of insecurity among Southeast Asian nations. Before the end of the Cold War, the U.S. forces at Subic Bay and Clark Field in the Philippines and the Soviet forces at Cam Ranh Bay in Vietnam provided a deterrent effect against a number of potential threats in the SCS area. But in the 1990s, Southeast Asian nations could not but rely more on their own defense efforts to confront potential conflicts in the area. As a consequence, there was an increase in national defense budgets and arms procurements in countries such as the Philippines, Malaysia, and Indonesia. Moreover, several regional attempts were made, aiming at establishing a regional security dialogue to help diminish or manage the potential conflicts in the SCS area.

The first of the three following sections summarizes the Chinese actions taken during the late 1980s and early 1990s. The second analyzes the counter-actions taken by other SCS littoral states in response to the Chinese behavior in the area. The third section examines those regional attempts, aimed at alleviating tensions and preventing disputes from escalating into serious armed conflict in the SCS area.

D. “China Threat” in the South China Sea Area?

In 1987, it was reported that the Chinese geophysical survey in the waters surrounding the Spratly Islands was completed. The result of the survey suggested that the Spratly Islands contained large quantities of oil and gas deposits.⁸⁷ Also in 1987, China decided to

86. See Background Notes: Philippines, August 1999, released by the Bureau of East Asian and Pacific Affairs, U.S. Department of State, available at <http://www.state.gov/www/background_notes/philippines_0899_bgn.html>.

87. *Zhong-yang-zhi-bao* (Central Daily News), Taipei, Taiwan, February 26, 1988, p. 1.

separate Hainan Island from Guangdong Province, making it a province in its own right.⁸⁸ China declared the Spratly Islands to be the "strategic border" of Hainan province.⁸⁹ In January 1988, a conference was held in Beijing to examine all kinds of issues in relation to the Spratly Islands.⁹⁰ In February 1988, China began to construct a permanently-occupied observation station on Fiery Cross.⁹¹ One month later, Chinese and Vietnamese ships exchanged fire in the waters near Johnson Reef in the Spratly area.⁹² Since the 1988 naval skirmish, there have been indications that China is considering military means to settle the Spratly Islands dispute.⁹³

In April 1988, China accused Vietnam of landing war preparations around the disputed Spratly Islands.⁹⁴ In May 1988, it was reported that there were twenty Chinese and thirty Vietnamese warships in the Spratly area.⁹⁵ In March 1989, a Spratly Front Line Headquarters was established to command a patrolling mission in the Spratly area.⁹⁶ In August 1989, China placed "sovereignty markers" on six features of the Spratly Islands group.⁹⁷ In September 1989, the Chinese Ministry of Foreign Affairs issued a statement, demanding the withdrawal of all Vietnamese forces from the Spratly Islands.⁹⁸ It was reported that the Chinese navy was preparing for actions against Vietnam in the Spratly Islands in late 1989. However, the planned military actions were cancelled, mainly because of a shortage of funds and the foreign policy consideration of not being further isolated from the international community after the Tiananmen Square massacre in June 1989.⁹⁹

In August 1990, in an effort to allay ASEAN's fear over Beijing's actions in the SCS area, Li Peng, the Chinese Premier, proposed during a press conference held in Singapore that "China is

88. *Central Daily News*, September 4, 1997, p. 7.

89. Michael Bennett, "The People's Republic of China and the Use of International Law in the Spratly Islands," *Stanford Journal of International Law*, vol. 28, 1992, p. 428.

90. *People's Daily* (oversea edition), January 13, 1988, p. 4.

91. John W. Garver, "China's Push through the SCS: The Interaction of Bureaucratic and National Interests," *The China Quarterly*, 1992, p. 1008.

92. For a detailed Chinese report on the incident, see *People's Daily* (oversea edition), April 1, 1988, p. 1.

93. Michael Bennett, *supra* note 89.

94. See *Washington Post*, April 6, 1988, p. 32.

95. "Conflict in Spratlys Spur Rift between Hanoi and Moscow," *The Christian Science Monitor*, June 14, 1988, p. 8.

96. *Shi-je-zhi-bao* (World Journal), March 16, 1989, p. 31.

97. *World Journal*, August 7, 1989; *Central Daily News*, August 8, 1989, p. 1.

98. *Central Daily News*, October 10, 1989, p. 4.

99. John W. Garver, *supra* note 91, p. 1015.

ready to join efforts with Southeast Asian countries to develop the Spratly Islands, while putting aside for the time being the question of sovereignty."¹⁰⁰ The same proposal was restated by the Chinese delegation during the Second Workshop on Managing Potential Conflicts in the SCS held in Bandung, Indonesia in July 1991.¹⁰¹ However, the idea was not much different from the one given in 1978 when China proposed to shelve the issue of sovereignty over the Diaoyu (Senkaku) Islands in the East China Sea and jointly develop the islands with Japan, which also claims sovereignty over the Diaoyu Islands.¹⁰² In addition, the proposal did not mean that China had decided to suspend its efforts to consolidate control in the SCS. In fact, actions had continuously been taken by China in support of its sovereignty claims since 1991.

In October 1991, it was reported that the Chinese Standing Committee of the National People's Congress was in the process of deliberating a draft law on territorial seas and contiguous zones.¹⁰³ In January 1992, the vice-governor of Hainan Province, accompanied by three generals and 132 officials, conducted high-ranking Chinese inspection of the Spratlys to date. Seven "sovereignty markers" were placed on James Shoal, and one "inspection memorial marker" on Yongshu Jiao (Fiery Cross).¹⁰⁴ On February 25, 1992, the Law on the Territorial Sea and the Contiguous Zone of the People's Republic of China was adopted.¹⁰⁵ In May 1992, a contract was signed between China's National Offshore Oil Company and Crestone Energy Corporation of the United States in the area near Wan'an Tan (Vanguard Bank) in the Spratly Islands group.¹⁰⁶ The Vietnamese Foreign Ministry issued a statement, protesting

100. "Reef Knots: China Seeks ASEAN Support for Spratly Plan," *Far Eastern Economic Review*, August 30, 1990, p. 11.

101. See Proceedings of the Workshop on Managing Potential Conflicts in the SCS, Bandung, July 15-18, 1991, Annex O: Speech on Political and Security Issues by Wang Ying-fan, pp. 191-194.

102. *World Journal*, September 8, 1990, p. 1. For recent developments of the dispute, see Hungdah Chiu, "An Analysis of the Sino-Japanese Dispute over T'aoyutai Islets (Senkaku Gunto)," *Chinese Yearbook of International Law and Affairs*, Vol. 15 (1996-1997), pp. 9-31.

103. *World Journal*, October 28, 1991, p. 2.

104. *World Journal*, January 23, 1992, p. A10.

105. The official English version of the law is reprinted in Bureau of Oceans and International Environmental and Scientific Affairs (BOIESA), United States Department of State, *Limits in the Seas: Straight Baselines Claim: China*, No. 117, July 9, 1996, pp. 11-14.

106. Barry Wain, "Beijing and Hanoi Play with Fire in SCS," *The Asian Wall Street Journal*, July 20, 1994, p. 5.

that the contract "seriously violated Vietnam's sovereign rights over its continental shelf and exclusive economic zone."¹⁰⁷ Despite the Vietnamese protest, China warned that it would use its navy, if necessary, to enforce the contract.¹⁰⁸ About two months later, China placed a "sovereignty marker" on Nanxun Jiao (Gaven Reef) of the Spratly Islands group.¹⁰⁹

In July 1994, it was reported that China had deployed two warships in the Spratly area to prevent the Vietnamese from re-supplying a rig which was drilling in a corner of the Crestone contract area.¹¹⁰ In late January 1995, a group of local officials from Hainan Province, led by the governor, visited the Spratly Islands. During the visit, fifteen "sovereignty markers" in total were placed on Zengmu Ansha (James Shoal). In early February 1995, the Philippines detected that structures had been built by China on Meiji Jiao (Mischeif Reef). The reef was also claimed by Manila and was located just 200 or so kilometres from Palawan Island of the Philippines. Videl Ramos, president of the Philippines, accused China of deploying armed vessels in the waters adjacent to the disputed reef.¹¹¹

To back up its actions in the contested Spratly area, China had been strengthening its military power since the late 1980s, upgrading its naval and air capabilities. As a result of this strategic consideration, China's navy and air force have received a disproportionate share of the Chinese military budget in recent years.¹¹² A large amount of China's military budget was spent on acquiring advanced foreign-made weapon systems and technology, including bombers, long-range transports, airborne warning and control planes, high altitude interceptors, submarines, ballistic missiles and aerial refueling technology. In addition, airstrips, airbases, airplane hangars, ports and other military facilities were built on the islands controlled by Chinese troops in the SCS to help increase China's striking capability.

107. "China Stirs the Pot," *Far Eastern Economic Review*, July 9, 1992, p. 14.

108. Barry Wain, *op. cit.*

109. *Lein-he-bao* (United Daily News), Taipei, Taiwan, December 1, 1992, p. 10.

110. *United Daily News*, Taipei, Taiwan, July 22, 1994, p. 1.

111. See "Territorial Imperative," *Far Eastern Economic Review*, February 23, 1995, pp. 14-16; also "Making Mischief," *The Economist*, February 18, 1995, p. 28.

112. See Yihong Zhang, "China Heads toward Blue Waters," *International Defense Review*, November 1993, p. 879; also David Shambaugh, "Time for China to Address Worries about Its Military Intentions," *International Herald Tribune*, November 8, 1993, p. 8.

In July 1990, China completed the construction of a major airstrip on Woody Island (Yunghsing Island), the largest of the Paracel archipelago. The runway was reported to be 2,600 meters long and could accommodate any aircraft of the People's Liberation Army (PLA). Accordingly, the airfield extended aircover for Chinese naval and merchant vessels sailing to and from the nearby Spratly Islands.¹¹³ In October the same year, it was reported that China had acquired aerial-refueling kits from Iran, and that the China's South Sea fleet's naval aviation arms was expected to be the first unit to be equipped with the technology. This refueling capability is important to China's military actions in the Spratly Islands, mainly because it could help overcome the problem of the inability of Chinese aircraft to provide air cover for its warships against Vietnamese fighters.¹¹⁴ In 1992, China acquired the French-made Naval Crotale surface-to-air missile system, which was placed on the refitted *Luda*-class destroyers. Also in 1992, China began building 27 *Jianghu*-class frigates.¹¹⁵ During the period between 1992 and 1993, China purchased 26 *Sukhoi* 27 fighter aircraft, 10 *IL76* heavy transport aircraft, and 100 *S300* surface-to-air missiles from Russia.¹¹⁶ In April 1993, it was reported that China transferred three *Romeo*-class convention submarines from its North Sea Fleet to the South Sea Fleet to help patrol the contested areas of the SCS.¹¹⁷ In August 1993, China was constructing a naval port near the airstrip on Woody Island.¹¹⁸ In March 1994, China deployed additional warplanes at the airbase on Woody Island.¹¹⁹ In May 1994, China launched its first new indigenous diesel submarine, *Wuhan*-class.¹²⁰

In October 1994, a Chinese *Han*-class submarine was involved in a three-day encounter with the U.S. carrier *USS Kitty Hawk* in

113. "China Boosts Presence in SCS," *International Defense Review*, May 1994, p. 10; also *China Post* (Taipei, Taiwan), March 7, 1994, p. 1; and *United Daily News*, March 6, 1994, p. 4.

114. "Fuel for Thought," *Far Eastern Economic Review*, October 4, 1990, p. 8.

115. Allen Shephard, *supra* note 84, p. 186.

116. "Power Game," *Asia 1994 Yearbook*, p. 22; Tai Ming Cheng, "Sukhoi, Sams, Subs: China's Steps Up Arms Purchases from Russia," *Far Eastern Economic Review*, April 8, 1993, p. 23; and Yihong Zhang, *supra* note 102, p. 880.

117. "Quiet Menace," *Far Eastern Economic Review*, April 8, 1993, p. 9.

118. *The China Post*, August 22, 1993, p. 11.

119. *China Post*, March 7, 1994, p. 1.

120. Barbara Starr, "'Designed in China': A New SSK Is Launched," *Jane's Defense Weekly*, August 13, 1994, p. 3.

the Yellow Sea.¹²¹ The incident was viewed by U.S. officials as “one of the clearest indications of China’s intentions to deploy its navy as a blue water force.”¹²² In November 1994, China signed an agreement to purchase four *Kilo*-class submarines from Russia.¹²³ The first of the four purchased submarines was transported to the Chinese North Sea Fleet in February 1995.¹²⁴ In September 1996, China signed a contract to purchase two *Sovremenny*-class destroyers from Russia. The first destroyer was delivered to China in February 2000 and the second in January 2001. The purchased destroyers carry *Sunburn* supersonic missiles that can threaten the defense of U.S. warships. China tested firing the *Sunburn* supersonic missiles at sea in November 2000.¹²⁵ It was also observed that China’s navy had received increased investments from its government to deploy advanced ballistic missile submarines, as well as new nuclear-powered attack and diesel-electric submarines.¹²⁶ After obtaining the needed technology from Russia, China began to build its own nuclear-powered strategic submarines, expected to be completed in 2001.¹²⁷ In addition, China is now building one 10,000 metric ton aircraft carrier, which is expected to join the PLA Navy in 2006.¹²⁸ Moreover, in 1999, China purchased 40 *Su-30MKK* fighters from Russia. The first ten of the deal were delivered to China in December 2000. The Chinese purchased 28 *Su-27* fighters from Russia, also delivered to China by the end of 2000.¹²⁹

Since an increase in defense budget is often viewed as one of the important indicators of a country’s strategic intentions or priorities, it is also important to take a look at the continuing increases in China’s defense budget since the late 1980s. In 1988, China’s defense budget was Y21.5 billion.¹³⁰ The budget was increased to

121. The incident was confirmed and reported in December 1994. See *United Daily News*, December 16, 1994, p. 3.

122. “‘Han Incident’ Proof of China’s Naval Ambition,” *Jane’s Defense Weekly*, January 7, 1995, p. 5.

123. Kathy Chen, “China’s Purchase of Subs May Fuel Regional Worries,” *The Asian Wall Street Journal*, February 9, 1995, p. 1.

124. *United Daily News*, February 20, 1995, p. 4.

125. *China Times* (Taipei), January 19, 2001, p. 11.

126. “USA Fears Growth in Nuclear Chinese Navy,” *Jane’s Defence Weekly*, January 7, 1995, p. 6.

127. See *Jane’s Defence Weekly*, February 18, 1998, p. 37; and *United Daily News* (Taipei), January 7, 2001, p. 11.

128. *United Daily News*, January 16, 1995, p. 2.

129. *China Times* (Taipei), December 24, 2000, p. 13.

130. *New York Times*, March 17, 1995.

Y24.55 billion in 1989¹³¹; Y29.03 billion in 1990¹³²; Y32.5 billion (US\$6.11 billion) in 1991; Y37 billion in 1992 (US\$6.76 billion); Y41.8 billion (US\$7.31 billion) in 1993; Y58 billion (US\$6.7 billion) in 1994; Y63.3 billion (US\$7.6 billion) in 1995; Y70.2 billion (US\$8.4 billion) in 1996; Y98.5 billion in 1998; and Y107.6 billion in 1999.¹³³ In October 2000, it was reported that the Chinese defense budget for 2000 was set at Y 121.2 billion.¹³⁴ In March 2001, it was further reported that the budget was to be set at Y141 billion (US\$17 billion), marking the 13th straight year of double-digit increases in the Chinese military budget.¹³⁵

China's external behavior in the SCS area and its growing military buildup since the late 1980s indeed made the countries in Southeast Asia and other countries in the Asia-Pacific region feel uneasy. Most of the countries in the region worried about China's intentions of: (1) using military force to consolidate its sovereignty claim to the Spratly Islands; (2) turning the entire SCS into a "Chinese lake"; (3) filling the power vacuum in the Southeast Asia created by the reduced military presence of the U.S. and the former Soviet Union; and (4) seeking a sphere of influence in Southeast Asia. However, in an attempt to allay the fears of the countries in the Asia-Pacific, Beijing repeatedly assured that its military modernization was for purpose of self-defense only,¹³⁶ that China had no expansionist and hegemonistic intentions in the region,¹³⁷ that China never sought a sphere of influence,¹³⁸ that China had no intention of filling the "power vacuum" in Southeast Asia,¹³⁹ that the

131. *The Military Balance 1989-1990* (London: The International Institute for Strategic Studies, 1989), p. 146.

132. *China Times* (Taipei), February 12, 1995, p. 9.

133. *The Military Balance 1992-1993*, p. 145; *The Military Balance 1993-1994*, p. 152; *The Military Balance 1994-1995*, p. 170; *The Military Balance 1996-1997*, p. 179; and *China Times*, October 17, 2000, p. 14.

134. *China Times*, October 17, 2000, p. 14.

135. *Central Daily*, March 12, 2001, p. 9.

136. Ge Yang, "China's Rise: Threat or Not?" *Beijing Review*, January 30 - February 5, 1995, pp. 24-25.

137. The Chinese premier Li Peng's statement, see Chrlyle A. Thayer, "Sino-Vietnamese Relations," *Asian Survey*, Vol. 34, No. 6, June 1994, p. 526.

138. Statement of Li Lanqing, Vice-Premier of China's State Council, see "The Pacific Century," *Far Eastern Economic Review*, June 2, 1994, pp. 21-22; and Qian Qichen's statement, "China's Position on Asia-Pacific Security," *Beijing Review*, August 8-14, 1994, p. 22.

139. Chinese Foreign Minister Qian Qichen's statement, see Raphael Pura, "China Seeks Closer Security Ties to ASEAN," *The Asian Wall Street Journal*, July 22, 1992, p. 1, 7.

Spratly issue would be settled by peaceful means,¹⁴⁰ and that China would “always be a positive force for peace, stability and development in the Asia-Pacific region.”¹⁴¹

China’s repeated assurance of peaceful intentions had not totally been rejected by the countries in the region. Malaysia and the United States seemed to accept the Chinese statements at face value. In March 1994, for instance, Malaysian Prime Minister Mahathir Mohamad asserted that China was no longer a threat in the region.¹⁴² In January 1995, when visiting New Delhi, U.S. Defense Secretary William Perry pointed out that China would not be a global or regional threat, even though Beijing’s defense budget had been increased.¹⁴³ During a press conference held in Singapore in early March 1995, Admiral Richard Macke, the commander-in-chief of the U.S. Pacific Command, stated that the buildup of China’s naval power and the increase in its actions in the Spratly Islands would not create an immediate threat to the Asia-Pacific region.¹⁴⁴ In March 1995, Dick Cheney, former U.S. Defense Secretary, mentioned in a news conference in Singapore that, “I do not have the feeling that the Chinese are embarked on some kind of massive military arms buildup that threatens the security and stability of the (Asia-Pacific) region.”¹⁴⁵ Clive H. Schofield and William G. Stormont also suggested that

[a]lthough China’s rapid naval expansion, its entrenched position on the Spratly Islands, and its demonstrated willingness to use force provide compelling reasons for concern among the states of Southeast Asia, . . . fears of an aggressive, expansionist China are exaggerated, as both international and domestic constraints severely limit China’s options.¹⁴⁶

140. China’s Defense Minister Chi Haotian’s statement, see “Power Game,” *supra* note 116, p. 19; see also in “Fear of Expansionism Groundless,” *China Post*, February 23, 1995, p. 2.

141. Qian Qichen’s statement, see Michael Vatikiotis, “Uncharted Waters,” *Far Eastern Economic Review*, August 5, 1993, p. 11.

142. See J.N. Mak, “ASEAN Maritime Insecurity: Contingency Planning in an Uncertain World,” *International Defense Review*, Defense’ 95, p. 60; see also “Trouble on the Horizon,” *Far Eastern Economic Review*, September 23, 1993, p. 26.

143. *United Daily News*, January 15, 1995, p. 9.

144. *United Daily News*, March 8, 1995, p. 10.

145. “Beijing Says no Tension Exists over Spratlys,” *China Post*, March 11, 1995, p. 1.

146. Clive H. Schofield and William Stormont, “An Arms Race in the SCS?” *Ocean Yearbook*, No. 12, 1996, p. 304.

Most SCS littoral states, however, did not accept the Chinese assurance of peaceful intentions. They pointed out that Beijing's assurances had not been supported with actions. In fact, their apprehension over China's intentions in the entire SCS area had been reinforced by the discovery of four structures built by the Chinese on Mischief Reef of the disputed Spratly Islands in February 1995. A regional perception of China as a potentially destabilizing factor, threatening peace and security in the Asia-Pacific region, had also been fortified. On March 18, 1995, in response to the disputes between China and the Philippines over the ownership of Mischief Reef, ASEAN foreign ministers issued a statement in Singapore, expressing their "serious concern over recent developments which affect peace and stability in the SCS."¹⁴⁷ Also in March 1995, Australia, New Zealand, Thailand, Singapore, Indonesia, Malaysia, and Hong Kong started an 18-day-long joint naval exercise in the waters near the northern part of Australia. The purpose of the exercises was to strengthen military cooperation among the participant countries to maintain the long-term security of the Southeast Asia region.¹⁴⁸

E. Unilateral Reactions to China's External Behavior in the South China Sea

As shown above, China's actions in the Spratly Islands and its growing military buildup since the late 1980s have made the countries involved in or concerned with the Spratly disputes uneasy. In response, unilateral actions have been taken by both the claimant and non-claimant countries in the region, aiming at strengthening their respective naval and air capabilities. In addition, unilateral actions have also been taken by the claimant countries to help consolidate their sovereignty and maritime jurisdictional claims in the SCS area. The following reviews the unilateral actions taken by the claimant and non-claimant states before the issue of the official statement on the Spratlys and the SCS by the U.S. Department of State in May 1995.

In 1991, Taiwan agreed on a US\$4.8 billion deal to buy 16 *La Fayette*-class frigates from France. In July 1992, the U.S. Congress approved to lease three *Knox*-class frigates to Taiwan.¹⁴⁹ In late

147. "ASEAN Ministers Worry over Spratly Islands," *China News*, March 19, 1995, p. 2.

148. *United Daily News*, March 14, 1995, p. 9.

149. *China Post*, January 28, 1994, p. 16.

1992, Washington agreed to sell Taiwan 150 *F-16* fighters. In September 1993, the U.S. government announced the decision to sell four *E-2 Hawkeye* early warning aircraft and lease three *Knox*-class frigates to Taiwan.¹⁵⁰ In June 1993, Malaysia decided to purchase 18 *Mig29s* and eight US *F/A18Ds*.¹⁵¹

It was reported that the Philippines also planned to acquire foreign-made missile-armed patrol boats, light combat helicopters, fighter/trainer jets, and corvette ships.¹⁵² In April 1994, the Philippines and Vietnam planned to strengthen their military cooperation. The plan was believed to be a response to China's increasing military pressures in the Spratly Islands group. In February 1995, in response to China's action on Mischief Reef, the Philippine Senate passed a bill to modernize the country's armed forces, with particular emphasis on the largely obsolete equipment of its navy and air force.¹⁵³ Brunei also spent an increasing amount of money on weaponry to guard its maritime interests. It purchased three 1,000-ton offshore patrol vessels, 16 *Hawk 100* fighter/trainer aircraft, and three or four *CN-235* aircraft fitted for maritime functions. In addition, Brunei was also considering buying two or three corvettes and up to six intermediate-lift helicopters for troop movements.¹⁵⁴

Non-claimant countries in the area, such as Indonesia and Singapore, also purchased ships and aircraft to help increase their naval and air capability. In late 1992, for instance, Indonesia signed a deal to purchase 39 second-hand former East German warships.¹⁵⁵ Singapore acquired a new support ship and upgraded six *Sea Wolf* missile craft and numerous aircraft. It also planned to purchase another eleven *F-16* aircraft, four additional *Fokker-50 Maritime Enforcer Mk2* aircraft, airborne early warning and control (AEW&C) aircraft, six missile corvettes with surface warfare and anti-submarine capabilities, and six mine counter-measure vessels.¹⁵⁶ Thailand, for its part, purchased a helicopter carrier from Spain.¹⁵⁷

There has been considerable concern expressed by security analysts that these new arms acquisitions will fuel an arms race in

150. *Ibid.*, p. 22.

151. "Power Game," *supra* note 116, p. 24.

152. Allen Shephard, *supra* note 84, pp. 186-187.

153. "Spratlys Tension Helps Push Forces Upgrade," *Jane's Defense Weekly*, February 25, 1995, p. 6.

154. Allen Shephard, *supra* note 84, p. 187.

155. "Power Game," *supra* note 116, p. 23.

156. Allen Shepherd, *supra* note 84, p. 187.

157. See Charles A. Meconis, "Naval Arms Control in the Asia-Pacific Region after the Cold War," *Ocean Yearbook* 10, 1994, p. 358.

the Asia-Pacific region.¹⁵⁸ However, while Clive H. Schofield and William G. Stormont agree that the fact that "force modernization [in the SCS area] is proceeding apace is undeniable," they argue that, "[w]hether this [defense acquisitions] constitutes an arms race is more debatable."¹⁵⁹ Perry Wood is of the opinion that such fears are misplaced. Instead, he suggests that the increasing arms purchases in Southeast Asian countries "actually represent very modest efforts to obtain some capability to patrol adequately and protect their air and sea territory."¹⁶⁰ Andrew Mack in his paper assessing the implications of the arms build-up in East Asia does not conclude that a genuine arms race was in progress in the Asia-Pacific region. Nevertheless, he does point to some threatening long-term implications: (1) the region is moving into a period of uncertainty reflected in the current military build-up; (2) if the build-up continues at the present rate it is likely soon to generate a growing regional concern; (3) the strike power of regional states is increasing and as power projection capabilities increase, the ability of regional states to threaten other states also increases; and (4) military build-ups are not, in themselves, a cause of instability when political relationships are good, but the very nature of offensive weapons acquisitions will tend to cause concern when the strategic future appears uncertain, and instability when political relationships deteriorate.¹⁶¹

158. See Amitav Acharya, "An Arms Race in Southeast Asia?" reprinted in *The Evolving Pacific Power Structure*, edited by Derek da Cunha (Singapore: Institute of Southeast Asian Studies, 1996), pp. 83-88; Amitav Acharya, "An Arms Race in Post-Cold War Southeast Asia? Prospects for Control," Pacific Strategic Paper, No. 8, Singapore: Institute for Southeast Asian Studies, 1994; Clive H. Schofield and William G. Stormont, "An Arms Race in the SCS," *Ocean Yearbook* 12, 1996, pp. 286-305; Michael G. Gallagher, "China's Illusory Threat to the SCS," *International Studies*, vol. 19, No. 1 (Summer 1994), pp. 169-194; and Andrew Mack and Desmond Ball, "The Military Build-Up in the Asia-Pacific Region: Scope, Causes and Implications for Security," Australian National University Strategic and Defense Studies Centre Working Paper, No. 264, Canberra, Australia: Australia National University, October 1992; Panitan Wattanayagorn and Desmond Ball, "A Regional arms Race?" *Journal of Strategic Studies*, September 1995, pp. 147-174; "Head Off East Asia Arms Race," *Aviation Week and Space Technology*, April 17, 1995, p. 68.

159. Clive H. Schofield and William G. Stormont, *ibid.*, p. 305.

160. Perry Wood, "The United States and Southeast Asia: Toward A New Era," in *Asian Security to the Year 2000*, edited by Dianne L. Smith, the Strategic Studies Institute, U.S. Army War College, December 15, 1995, p. 130.

161. Andrew Mack, "Reassurance Versus Deterrence Strategies for the Asia-Pacific," February 1991, cited in Edward L. Miles, "U.S. Security Interests in a Post-Cold War and the Law of the Sea," *Columbia Journal of Transnational Law*, Vol. 36, 1997, p. 382.

In addition to building up their naval and air capabilities, the countries involved in the disputes over the ownership of the Spratly Islands have also taken a variety of actions in support of their sovereignty claims since 1990. In September 1991, Malaysia built an airstrip on Swallow Reef of the Spratly Islands group, which has been under its control since 1977.¹⁶² The airstrip was built not only for military but also tourist purposes. In late 1991, Malaysia declared that the atoll was ready to receive tourists.¹⁶³ In July 1993, it was reported that Taiwan was considering building an airfield on its occupied island of Itu Aba (Taiping Dao), the largest in the Spratly Islands group.¹⁶⁴ In April 1994, Taiwan dispatched two maritime police patrol vessels to Itu Aba in support of Taiwan's sovereignty claims.¹⁶⁵ Again, in March 1995, Taiwan announced that its maritime police would send patrol vessels to the Spratly Islands to carry out regular patrol missions.¹⁶⁶ In May 1994, Vietnam leased a block containing the promising Blue Dragon structure, located just west of Crestone contract area, to a consortium that included the U.S. oil company Mobil.¹⁶⁷ In August 1994, it was reported that the Vietnamese warship had circled around the Chinese exploratory vessel *Shiyann 21* in the disputed waters near the Spratly Islands and finally forced the vessel to sail into international waters.¹⁶⁸ In September 1994, China accused Vietnam of building a fishing harbor on nanwei Dao (Spratly Island) of the Spratly Archipelago which was occupied by Vietnamese troops.¹⁶⁹

F. Regional Attempt to Help Manage Potential Conflicts in the South China Sea

Since 1990, several regional attempts, both official and unofficial, have been made, aimed at establishing a regional security dialogue to help diminish or manage the existing potential conflicts in the SCS area. In July, for instance, during the twenty-fifth AMM, the foreign ministers expressed their concerns that the SCS territo-

162. *World Journal*, September 11, 1991, p. 4.

163. See Lee Lai To, "Security Issues of the SCS in the Post-Cambodian Era," in *Proceeding of the Third Workshop on Managing Potential Conflicts in the SCS*, Yogyakarta, Indonesia, June 29 - July 2, 1992, p. 147.

164. *United Daily News*, July 14, 1993, p. 4.

165. *United Daily News*, April 25, 1994, p. 1.

166. *China Post*, March 29, 1995, p. 1.

167. Barry Wain, "Beijing and Hanoi Play with Fire in S. China Sea," *the Asian Wall Street Journal*, July 20, 1994, p. 5.

168. *China Post*, August 23, 1994, p. 9.

169. *China News*, September 9, 1994, p. 1.

rial disputes could escalate, affecting peace and security in Southeast Asia. In response, the ASEAN Declaration on the SCS was issued at the conclusion of the meeting, in which the foreign ministers stressed "the necessity to resolve all sovereignty and jurisdictional issues pertaining to the SCS by peaceful means, without resorting to force" and urged "all parties concerned to exercise restraint with the view to creating a positive climate for the eventual resolution of all disputes."¹⁷⁰ The Declaration was endorsed wholeheartedly by Vietnam. However, perceiving it as an ASEAN attempt to "internationalize" the Spratly issue, China only concurred with some of the Declaration's basic principles.¹⁷¹ In September 1992, ASEAN's position on the Spratly disputes and the SCS issues was endorsed by a paragraph written in the final document of the Non-Aligned Movement's political committee. China, however, opposed its inclusion in the document.¹⁷²

In July 1993, at the twenty-sixth AMM, a decision was taken to set up a formal ARF to discuss political and security issues in the Asia-Pacific region, including the disputes over ownership of the Spratly Islands in the SCS area.¹⁷³ China had previously been lukewarm toward the proposal, mainly because it traditionally has preferred a bilateral, sub-regional approach in dealing with international affairs. However, aware of changing sentiments in the region, and believing that it was better to be a participant than to sit out, Beijing eventually gave its support to the regional security dialogue.¹⁷⁴

In July 1994, the first ARF was held in Bangkok, Thailand. Eighteen countries participated the first ARF meeting, including the six members of ASEAN (Brunei, Indonesia, Malaysia, the Philippines, Singapore, and Thailand), its seven dialogue partners (Australia, the European Community, Canada, Japan, South Korea, New Zealand and the United States), its three observers (Vietnam, Laos, and Papua New Guinea), plus Russia and China. The first ARF meeting was brief and had no formal agenda. In the chair-

170. For the Declaration, see Joint Communique, Twenty-Fifth Ministerial Meeting, Manila, July 21-22, 1992, in *ASEAN Economic Bulletin*, Vol. 9, No. 2 (November 1992), pp. 235-236.

171. See Trevor Findlay, "South-East Asia and New Asia-Pacific Security Dialogue," *SIPRI Yearbook* (Oxford: Oxford University Press, 1994), p. 133.

172. "Reason and Rhetoric," *Far Eastern Economic Review*, September 17, 1992, p. 10.

173. "Joint Communique, Twenty-sixth ASEAN Ministerial Meeting, July 23-24, 1993," *ASEAN Economic Bulletin*, November 1993, pp. 191-192.

174. Trevor Findlay, *supra* note 171, p. 141; "Power Game," *supra* note 116, p. 18.

man's statement the dispute over the Spratly Islands was not mentioned.¹⁷⁵ However, it was expected that a number of specific proposals relating to the future management of Asia-Pacific security, such as confidence and security building measures (CSBMs), maritime security and preventive diplomacy, would be discussed in the second ARF meeting to be held in Brunei in 1995.¹⁷⁶ During the first ARF meeting, Qian Qichen, the Chinese Foreign Minister, stated:

There are some territorial and boundary issues left over from history which need to be resolved. . . . We unanimously agreed to set up the Association of Southeast Asian Nations (ASEAN) Regional Forum so as to jointly explore effective channels for dialogue, eliminate unstable factors, consolidate and strengthen peace and stability in this region, because all members value the healthy environment and this opportunity for historical development. . . . With regard to security in the Asia-Pacific region, China pursues three basic objectives: (1) its stability and prosperity; (2) a lasting peaceful and tranquil situation in the surrounding region; (3) and dialogue and cooperation on the basis of mutual respect and equality.¹⁷⁷

Another important attempt to seek regional cooperation over the Spratly Islands dispute in the SCS was the idea of organizing an informal workshop on managing potential conflicts in the SCS, initiated in 1989 by Indonesian diplomat Dr. Hasjim Djalal and Professor Ian Townsend-Gault of the Centre for Asian Legal Studies at the University of British Columbia.¹⁷⁸ It was hoped that the workshop process, attended by government officials, researchers, academics, and naval personnel in their private capacities, would allow for a full and frank discussion of the SCS issues without the restrictions imposed by formal negotiations. The first workshop was held in Bali in January 1990. It was limited because it was attended by

175. Frank Ching, "ARF Off to a Good Start," *Far Eastern Economic Review*, August 11, 1994, p. 34.

176. See Gareth Evans, "Security in the Asia-Pacific Region," *International Defense Review — Defense'95*, pp. 56-57; "Balancing Act for the Far East Nations," *Jane's World of Defense*, 1995, p. 60; Trevor Findlay, *supra* note 171, pp. 143-146.

177. For an excerpt of the speech, see "China's Position on Asia-Pacific Security," *Beijing Review*, August 8-14, 1994, pp. 21-22.

178. For a brief review of the four workshops held between 1990 and 1993, see William G. Stormont, "Report: Managing Potential Conflicts in the SCS," *Marine Policy*, Vol. 18, No. 4, 1994, pp. 353-356.

the ASEAN states only, and the three key players in the Spratly disputes, China, Vietnam, and Taiwan, were not invited. Nevertheless, an agreement was reached during the first workshop that all interested SCS parties should be invited to the second meeting.¹⁷⁹ China accepted the invitation, but insisted that the sovereignty issue not be put on the agenda.¹⁸⁰ The second workshop, attended by the six members of ASEAN, China, Taiwan, Vietnam, and Laos, was held in Bandung, Indonesia in July 1991.

A number of principles were agreed upon by the participants attending the second SCS workshop meeting, including:

the renunciation of the use of force to settle territorial and jurisdictional disputes, the settlement of disputes by peaceful means through dialogue and negotiation, the exercise of self-restraint in order not to complicate an already difficult situation, and cooperation in the disputed areas without prejudices to territorial claims and the common interests of the countries concerned.¹⁸¹

It is worth citing the statement presented by the Chinese participant at the second SCS workshop meeting, since it represents Beijing's official position regarding how it deals with the security issues in the Asia-Pacific region and the SCS area. Wang Ying-fan, one of the Chinese participants, stated in the fourth session (political and security issues) that:

The Chinese Government has on many occasions expressed its stand on the issue of peace and security in Asia, emphasizing, among other things, the strict observation of the Five Principles of mutual respect for sovereignty and territorial integrity, mutual-non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence in state-to-state relations, striving for early fair and reasonable political solutions to the existing regional hot spot issues, settling international disputes through negotiations and peaceful means, and treating each other with goodwill and taking initiatives for greater exchanges between countries with

179. Ted L. McDorman, "The SCS Islands Dispute in the 1990s — A New Multilateral Process and Continuing Friction," *The International Journal of Marine and Coastal Law*, Vol. 8, No. 2, 1993, p. 276.

180. "Maritime Hegemony: Indonesia Proposes Talks on SCS," *Far Eastern Economic Review*, January 10, 1991, p. 11.

181. William G. Stormont, *supra* note 178, p. 354.

strained relations, with a view to easing tension. . . . The Chinese Government has solemnly declared that neither now nor in future will China seek hegemony, nor will it try to establish spheres of influence for itself at any time or in any place. . . . China is ready to maintain, together with other countries, peace and stability in Asia through joint efforts.¹⁸²

The third workshop was held in Yogyakarta in July 1992. Since the meeting took place in the aftermath of China's passage of the law on the territorial sea and the contiguous zone in February 1992, and its granting of an oil concession in the Spratly area to U.S. Crestone Energy Corporation in May 1992, tensions were elevated in the proceedings. Participants from Malaysia, Vietnam, and Indonesia challenged China's intentions regarding the enactment of the law and granting the oil concession. They also demanded an examination of the impact of China's actions on potential conflicts in the SCS.¹⁸³ Nevertheless, the participants reaffirmed the principles agreed to at the 1991 workshop. In addition, they agreed to establish two technical working groups consisting of experts, to prepare and, after approval by governments, organize joint activities on the following topics: (1) resource assessment and ways of development; and (2) marine scientific research.¹⁸⁴ The fourth SCS workshop took place in Surabaya in August 1993. The idea of "formalizing" the workshop process or "elevating" the workshop to a government-to-government level, was proposed by participants from Indonesia during the meeting, but was strongly opposed by participants from China and other countries. The head of the Chinese delegation commented, "No way! No way! We definitely disagree. The matter is very complicated. If the proceeding were formalized, the issue (the Spratly Islands dispute) would become very difficult (to handle)."¹⁸⁵ Moreover, the idea of inviting participants from non-regional states to the meeting was proposed and debated during the

182. Wang Ying-fan, *supra* note 101, pp. 191-192.

183. *United Daily News*, July 2, 1992, p. 2.

184. See the Third Workshop on Managing Potential Conflicts in the SCS, Yogyakarta, Indonesia, June 29 - July 2, 1992, Annex F. Workshop Statement, p. 72. The first Technical Working Group Meeting on Marine Scientific Research, hosted by the government of the Philippines, was held in Manila between May 30 and June 3, 1993. The Technical Working Group Meeting on Resource Assessment and Ways of Development was held in Jakarta between July 6-7, 1993. See also William G. Stormont, *supra* note 178, p. 354.

185. *United Daily News*, August 25, 1993, p. 9.

meeting. Fearing that the SCS issues might be internationalized, participants from China and other countries also rejected the idea.¹⁸⁶

The fifth workshop was held in Bukittinggi, Indonesia on October 26-28, 1994. During the meeting, Ali Alatas, foreign minister of Indonesia, proposed to broaden efforts at cooperation to countries beyond the SCS area. He raised the possibility of seeking the involvement of the United States, Japan, and Europe in technical projects to boost understanding in the Spratly area. The proposal, however, was rejected by China. Hsu Guang Jian, head of the Chinese delegation, stated that "it is not the time for us to involve them as we are just at the stage of discussing cooperation amongst ourselves."¹⁸⁷ In addition, China also opposed the proposal to freeze the armed forces in the SCS area.¹⁸⁸ Nevertheless, the meeting authorized Hasjim Djalal, co-chairman of the workshop, to seek support from non-SCS governments and agencies. Moreover, a US\$3.6 million budget for a three-year study on biological diversity in the SCS was approved during the meeting.¹⁸⁹

The sixth SCS workshop was held at Balikpapan, Indonesia on October 9-13, 1995; the seventh at Batam, Indonesia on December 14-16, 1996; the eighth at Puncak, Indonesia on December 2-5, 1997; the ninth at Ancol, Jakarta, Indonesia, on December 1-3, 1998; the tenth at Bogor, West Java, Indonesia on December 5-8, 1999; and the eleventh at Banten, Indonesia, on March 26-29, 2001. Since 1990, in total, 42 workshops, technical working group meetings, meetings of groups of experts, and study group meetings were held under the SCS workshop process (see Table 2 in Chapter I).

Besides the ARF and the SCS workshop process, there is another important unofficial dialogue process dealing with security issues in the Asia-Pacific region: the Council for Security Cooperation in the Asia Pacific (CSCAP), which was officially inaugurated in Kuala Lumpur in June 1993.¹⁹⁰ Membership in CSCAP is on an institutional basis. The ten founding members are leading research institutes (think tanks) in Australia, Canada, Indonesia, Japan, South Korea, Malaysia, the Philippines, Singapore, Thailand, and the United States. The purpose of CSCAP is to pro-

186. *United Daily News*, September 20, 1993, p. 4.

187. *China Post*, October 27, 1994, p. 2.

188. *United Daily News*, October 29, 1994, p. 1.

189. *China Post*, October 29, 1994, p. 1.

190. See Frank Ching, "NGOs and Regional Security," *Far Eastern Economic Review*, June 30, 1993, p. 29.

vide “a structured process for regional confidence building and security cooperation among countries and territories in the Asia-Pacific region.”¹⁹¹ One of the major functions of CSCAP is “to provide an informal mechanism by which political and security issues can be discussed by scholars, officials, and others in their private capacities.”¹⁹² At present, think tanks of the following countries or organizations, serving as CSCAP national committee, are members of the CSCAP: Australia, Canada, China, the European Union, Indonesia, Japan, North Korea, South Korea, Malaysia, Mongolia, New Zealand, the Philippines, the Russian Federation, Singapore, Thailand, the United States, Vietnam, and India.¹⁹³ The directors of the UN Regional Centre for Peace and Disarmament in Asia and the Pacific and the UN Department of Political Affairs-East Asia and the Pacific Division also participate in the CSCAP activities with the status of affiliate/observer. Under the CSCAP, there exist five issue-oriented international working groups, namely the working groups on Confidence and Security Building Measures (CSBMs), Comprehensive and Cooperative Security, Maritime Cooperation, the Security of the North Pacific, and Transnational Crime.¹⁹⁴ The five working groups discuss specific topics outlined in the 1995 ARF final communique.

G. Summary of Claims and Policies of the Claimant Countries

The SCS policies of the claimants (China, Vietnam, the Philippines, Malaysia, Taiwan, and Brunei) and non-claimants (Singapore, Thailand, and Indonesia) have been and will continue to be influenced, to various degrees, by the variables identified and discussed in last section. Likewise, the making of U.S. policy on the Spratlys and the SCS was and will remain influenced by the external policy input variables, in particular, the SCS policies of the claimant and non-claimant countries in the area.

Because the evaluation of the legal merits of the sovereignty and maritime jurisdictional claims of the countries in the SCS area is not the main focus of this study, and because there already exists a vast literature examining the vexed question of who owns what in

191. Article II(1) of the Charter of the Council for Security Cooperation in the Asia Pacific.

192. Article II(2)(a) of the Charter of the CSCAP.

193. India is the only associate member of the CSCAP. Scholars from Taiwan also participate in the CSCAP's five international working group meetings.

194. For more information about the five working groups, visit CSCAP home page at <<http://www/cscap.org>>.

the SCS and why, only a very brief account of the claims, legal bases for the claims, and the SCS policies of the claimant countries is given below. The SCS policies of the three non-claimant countries (Indonesia, Singapore, and Thailand) are also summarized.

1. Brunei

Brunei does not claim territorial sovereignty over any of the islands in the area, but claims the part of the SCS nearest to it as part of its continental shelf and EEZ. In 1984, Brunei declared an EEZ that includes Louisa Reef located in the southeastern part of the Spratly Islands group. The legal basis for substantiating Brunei's claim flows from continental shelf provisions in the 1982 LOSC.¹⁹⁵ As commented by Daniel J. Dzurek, Brunei has the smallest jurisdictional claim in the Spratly area and has been relatively silent on recent developments in the disputed area.¹⁹⁶ Brunei remains the only claimant country without a military presence in the Spratly Islands.

2. China

China claims all of the islands and most of the SCS for historical reasons. The Chinese claims are based on a number of historical events, including the naval expeditions to the Spratly Islands by the Han Dynasty in 110 AD and the Ming Dynasty from 1403-1433 AD. Chinese fishermen and merchants have worked the region over time. China has also used archaeological evidence to bolster its claims to the ownership of the islands in the SCS.¹⁹⁷ Although the

195. See Christopher C. Joyner, "The Spratly Islands Dispute: Rethinking the Interplay of Law, Diplomacy, and Geopolitics in the SCS," *The International Journal of Marine and Coastal Law*, Vol. 13, No. 2, 1998, p. 203. Jianming Shen, "Territorial Aspects of the SCS Island Disputes," in *Security Flashpoints: Oil, Islands, Sea Access and Military Confrontation*, edited by Myron H. Nordquist and John Norton Moore (The Hague/Boston/London: Martinus Nijhoff Publishers, 1998), p. 148; Melissa Castan, "Adrift in the SCS: International Dispute Resolution and the Spratly Islands Conflict," *Asia Pacific Law Review*, Vol. 6, No. 1, 1998, p. 97; Daniel J. Dzurek, "The Spratly Islands Dispute: Who's On First?" *Maritime Briefing*, Vol. 2, No. 1, 1996, p. 48; Brian K. Murphy, "Dangerous Ground: The Spratly Islands and International Law," *Ocean and Coastal Law Journal*, Vol. 1, 1995, p. 208; Barry Hart Dubner, "The Spratly 'Rocks' dispute — A 'Rockapelago' Defies Norms of International law," *Temple International and Comparative Law Journal*, Vol. 9, No. 2, Fall 1995, p. 314; Lee G. Gordner, "The Spratly Islands Dispute and the Law of the Sea," *Ocean Development and International Law*, Vol. 25, 1994, p. 68; and Allan Shephard, *supra* note 73, p. 195.

196. Daniel J. Dzurek, *ibid.*, p. 48.

197. See "China's Indisputable Sovereignty over the Xisha (Paracels) and Nansha (Spratlys) Islands," published on January 30, 1980 by the Chinese Foreign Ministry (in

Chinese government does not assert publicly that the entire waters enclosed by the so-called "tongue-shaped lines," "U-shaped lines," or "nine dotted lines" on the Chinese map of the SCS are the historic waters of China, some commentators maintain that the lines stand for the Chinese historic waters claim¹⁹⁸ (See Map 1 in Introduction) .

At present, the Paracel Islands group is under full Chinese control. In addition, China occupies eight islands of the Spratly group (see Table 3). China seized Johnson Reef of the Spratly Islands

Chinese); Chi-Kin Lo, *China's Policy Towards Territorial Disputes: The Case of the SCS Islands* (London and New York: Routledge, 1989); Mark J. Valencia, Jon M. Vandyke, and Noel A. Ludwig, *Sharing the Resources of the SCS* (The Hague/Boston/London: Martinus Nijhoff Publishers, 1997), pp. 20-24; Marwyn S. Samuels, *Contest for the SCS* (New York and London: Methuen, 1982); Jeanette Greenfield, *China's Practice in the Law of the Sea* (Oxford: Clarendon Press, 1992), pp. 150-167; The-Kuang Chang, "China's Claims of Sovereignty Over Spratly and Paracel Islands: A Historical and Legal Perspective," *Case Western Reserve Journal of International Law*, Vol. 23, 1991, pp. 399-420. Also, see Allan Shephard, *supra* note 84, pp. 189-192; Christopher C. Joyner, *supra* note 195, pp. 199-200; Lee G. Cordner, *supra* note 195, pp. 62-65; Barry Hart Dubner, *supra* note 195, p. 309; R. Haller-Trost, *supra* note 52, pp. 329-332; Melissa Castan, *supra* note 195, pp. 95-96; Brian K. Murphy, *supra* note 195, pp. 200-202; Ji Guoxing, "Maritime Jurisdiction in the Three China Seas," Policy Paper #19, published by the Institute on Global Conflict and Cooperation, University of California, October 1995, pp. 14-15; Jon M. Van Dyke and Dale L. Bennett, "Islands and the Delimitation of Ocean Space in the SCS," in *Ocean Yearbook 10*, edited by Elisabeth Mann Borgese, et al. (Chicago and London: The University of Chicago Press, 1993), pp. 61-64; and H. Harry L. Roque, Jr., "China's Claim to the Spratly Islands under International Law," *Journal of Energy & Natural Resources Law*, Vol. 15, No. 3, August 1997, pp. 189-211.

198. For instance, see Daniel Dzurek, *ibid.*, pp. 11-15. For more discussion on the nature of the nine dotted lines, see Barry Wain, "What Does China Want?" *The Asian Wall Street Journal*, July 7-8, 1995, p. 6; Philip Bowling, "The Spratlys: China's Neighbors Are Losing Patience," *The International Herald Tribune*, April 7, 1995, p. 8; Rigoberto Tiglao and John McBeth, "Territorial Imperative," *Far Eastern Economic Review*, February 23, 1995, p. 16; Pan Shiyong, *The Petropolitics of the Nansha Islands — China's Indisputable Legal Case* (Hong Kong: Economic Information Agency, July 1996); Pan Shiyong, "SCS and the International Practice of the Historic Title," paper presented at the SCS Conference, held in Washington in September 1994 by American Enterprise Institute (AEI); Yann-huei Song and Peter Kien-hong Yu, "China's 'Historic Waters' in the SCS: An Analysis from Taiwan, R.O.C.," *American Asian Review*, Vol. 12, No. 4, Winter 1994, pp. 83-101; R. Haller-Trost, *The Contested Maritime and Territorial Boundaries of Malaysia: An International Law Perspective* (London/The Hague/Boston: Kluwer Law International, 1998), pp. 329-332; Mark J. Valencia, Jon M. Vandyke, and Noel A. Ludwig, *ibid.*, pp. 24-28; and Zou Keyuan, "The Chinese Traditional Maritime Boundary Line in the SCS and Its Legal Consequences for the Resolution of the Dispute over the Spratly Islands," *The International Journal of Marine and Coastal Law*, Vol. 14, No. 1, 1999, pp. 27-55.

group from Vietnam after a naval skirmish that occurred in March 1988 in the waters near the disputed island.

3. *Malaysia*

Malaysia claims 12 islands located in the southern part of the Spratly Islands group, Amboyna Cay, Ardasier Reef, Barque Canada Reef, Commodore Reef, Dallas Reef, Erica Reef, Investigator Reef, Louisa Reef, Luconia Shoals, Mariveles Reef, Royal Charlotte Reef, and Swallow Reef.¹⁹⁹ The Malaysian claims are based on the continental shelf principle. Based upon the argument that the islands are within its continental shelf area, Malaysia declared its sovereignty over the claimed islands by publishing a map in 1979.²⁰⁰ At present, it is said that Malaysia occupies eight islands of the Spratly group (see Table 3).

4. *The Philippines*

The Philippine claims are based on the "discovery" of a Philippine explorer, Tomas Cloma, in 1956, and on the proximity principle. In 1971, the Philippines officially claimed the 53 islands in the Spratly group, referred to as the Kalayaan (Freedomland), by arguing that the claimed islands: (1) were not part of the Spratly Islands; and (2) had not belonged to anybody and were open to being claimed. In April 1972, the Philippine government incorporated the Kalayaan group into its Palawan province.²⁰¹ It is said that eleven of the islets or reefs in the Spratly Islands group are stationed by Philippine troops (see Table 3).

199. R. Haller-Trost, *supra* note 52, pp. 326-327.

200. *Ibid.*, pp. 323-325. For more information, see also Lu Ning, *supra* note 48, pp. 54-57; R. Haller-Trost, "Some Comments on the Territorial Sea and Continental Shelf Map of Malaysia," in *Ocean Yearbook* 12, 1996, pp. 316-333; B.A. Hamzah, "The Spratlies: What Can Be Done to Enhance Confidence," ISIS Research Note, Malaysia, 1990.

201. See Lu Ning, *supra* note 48, pp. 50-54; L.G. Cordner, *supra* note 195, pp. 66-67; Christopher C. Joyner, *supra* note 195, pp. 201-202; Brian K. Murphy, *supra* note 195, pp. 206-207; Barry Hart Dubner, *supra* note 181, pp. 312-313; Daniel J. Dzurek, *supra* note 195, pp. 49-50; Gil S. Fernandez, "The Philippines' SCS Claims," in Aileen San Pablo-Baviera, ed., *The SCS Disputes: Philippine Perspectives*, published by the Philippine-China Development Resource Center and the Philippine Association for Chinese Studies, 1992, pp. 19-24; Wilfrido V. Villacorta, "The Philippine Territorial Claim in the SCS," paper presented at the International Academic Conference on the Territorial Claims in the SCS, held at University of Hong Kong, December 4-6, 1990; Diane C. Drigot, "Oil Interests and the Law of the Sea: The Case of the Philippines," *Ocean Development and International Law*, Vol. 12, Number 1/2, 1982, pp. 23-70; and Pacifico A. Castro, editor, *The Philippines and the Law of the Sea* (Manila, Philippines: Foreign Service Institute, 1993).

Table 3. Status of Islands, Reefs, Shoals, Cays, Islets, or Banks in the Spratly Area Occupied by the Claimant Countries

Claimants	Occupied Islands
China	Subi Reef, Gaven Reef, Johnson Reef, Cuarteron Reef, Fiery Cross, Mischief Reef, Hugh Reef, and McKennan Reef
Taiwan	Itu Aba Island
Vietnam	Southwest Cay, South Reef, Petley Reef, Sandy Cay, Eldad Reef, Namyit Islet, Discovery Great Reef, Discovery Small Reef, Ross Reef, Sin Cowe Islet, Colin Reef, Landstown Reef, Pearson Reef, West Reef, Tennent or Pigeon Reef, Alison Reef, Central Reef, East Reef, Cornwallis S. Reef, Spratly Island, Bombay Castle Reef, Jones Reef, Rifleman Bank, Owen Shoal, Ladd Reef, Barque Canada Reef, Amboyna Cay, Prince of Wales Bank, and Vanguard Bank
The Philippines	Thitu Island, Northeast Cay, West York Island, Flat Island, Nanshan Island, Lankiam Cay, Loaita Reef, Commodore Reef, Irving Reef, Reed Bank, Halfmoon shoal
Malaysia	Mariveles Reef, Ardasier Bank, Ardasier Reef, Dallas Reef, Swallow Reef, Erica Reef, Royal Charlotte Reef, Investigator Shoal

Sources: Chen Ke Chin, *The SCS Islands of China* (Haikou, Hainan: International News Publishing Centre, 1996), pp. 540-549; Lung Chuan Ni, *A Study of Policy Strategy and Plans for Managing and Developing the SCS Islands* (Taipei: Taiwan Research Institute, 1998), p. 3-3 to p. 3-6; and *1996 National Defense Report, Republic of China* (Taipei: Li Ming Cultural Enterprise Co., Ltd, 1996), p. 26. (in Chinese)

5. Taiwan

Taiwan claims sovereignty over the Spratly Islands, the Paracel Islands, MacClesfield Bank, and the Pratas Islands.²⁰² Taiwan's claims are based upon history, geography, international law and the facts, which are believed to be similar to China's assertion. However, Taiwan's claims to the Spratly Islands are also based on its persistent occupation of the largest island, Itu Aba, of the Spratly

202. See the Policy Guidelines for the SCS, see Kuan-Ming Sun, "Policy of the Republic of China Towards the SCS," *Marine Policy*, Vol. 19, No. 5, 1995, Appendix 1, p. 408.

group since 1956.²⁰³ As commented by L.G. Cordner, "the Taiwan case appears stronger in the contemporary period in its having effectively occupied Itu Aba Island between 1946 and 1950 and from 1956 onward."²⁰⁴ Taiwan also claims historic waters jurisdiction within the so-called "U-shaped lines" found on Chinese and Taiwanese maps.²⁰⁵ At present, Taiwan occupies, in addition to Itu Aba Island, the Pratas Islands.

6. Vietnam

Vietnam claims the entire Paracel and Spratly Islands. Its claims are based on history and continental shelf principles. It is said that Vietnam now occupies 29 of the Spratly Islands (See Table 3). Prior to 1974, the Paracel Islands were under Vietnam's control, but China ousted Vietnamese troops from the Paracel Islands after a naval skirmish in the waters near the disputed island. The Vietnamese claims also cover a vast area of the SCS, which is not clearly defined. Vietnam follows China's example of using archaeological evidence to bolster its sovereignty claims in the SCS.²⁰⁶

203. See Christopher C. Joyner, *supra* note 181, pp. 200-201; L.G. Cordner, *supra* note 195, pp. 62-65; Barry Hart Dubner, *supra* note 181, pp. 310-311; Brian K. Murphy, *supra* note 195, pp. 205-206. See also Hungdah Chiu and Choon-ho Park, "Legal Status of the Paracel and spratly Islands," *Ocean Development and International Law Journal*, Vol. 3, No. 1, 1975, pp. 1-28; Steven Kuan-tsyh Yu, "Who Owns the Paracels and Spratlys? An Evaluation of the Nature and Legal Basis of the Conflicting Territorial Claims," *The Chinese Yearbook of International Law and Affairs*, Vol. 9 (1989-90), pp. 1-28; Statement by Tzen Wen-hua, Representative of Taipei Economic and Trade Office in Jakarta, in the Proceedings of the Second Workshop on Managing Potential Conflicts in the SCS, Bandung, Indonesia, July 15-18, 1991, pp. 289-290; "The Republic of China's Sovereignty over the Spratly Islands," a document published by the Government of the Republic of China on Taiwan, April 30, 1993; Kuan-Ming Sun, "Policy of the Republic of China towards the SCS," *Marine Policy*, Vol. 19, No. 2, 1995, pp. 401-409; Cheng-yi Lin, "Taiwan's SCS Policy," *Asian Survey*, Vol. 37, No. 4, April 1997, pp. 323-339.

204. L.G. Cordner, *supra* note 195, p. 65.

205. See Yann-huei Song and Peter Kien-hong Yu, "China's 'Historic Waters' in the SCS: An Analysis from Taiwan, R.O.C.," *American Asian Review*, Vol. 12, No. 4, Winter 1994, pp. 83-101.

206. See Brian K. Murphy, *supra* note 195, pp. 202-205; Melissa Castan, *supra* note 195, pp. 96-97; Barry Hart Dubner, *supra* note 195, pp. 311-312; Christopher C. Joyner, *supra* note 195, p. 201; L.G. Cordner, *supra* note 195, pp. 65-66; Jon M. Van Dyke and Dale L. Bennett, *supra* note 197, pp. 68-72; Mark J. Valencia, Jon M. Van Dyke, and Noel A. Ludwig, *supra* note 183, pp. 30-33; Daniel J. Dzurek, *supra* note 195, p. 50; Lu Ning, *supra* note 48, pp. 35-49. See also *White Paper on the Hoang Sa (Paracel) and Truong Sa (Spratly) Islands* (Saigon: Ministry of Foreign Affairs, Republic of Vietnam, 1975); Van Trong, "Ho Ang Sa Quan Dao Viet Nam" (Ha Noi: Nha Xuat Ban Khoa Hoc Xa Hoi, 1979) (in Vietnamese); Vu Phi Hoang, *Hai quan Dao Hoang Sa Va Truong Sa bo Phan Lanh tho Viet Nam*, (Hanoi: Nha Xuat Ban Quan Doi Nhan Dan, 1988) (in

Before concluding this chapter, it should be added that while Indonesia is not a claimant to any of the Spratly Islands, its exercise of sovereign rights and maritime jurisdiction in Indonesia's EEZs and continental shelf, including Natuna gas field, are believed to be affected by the Chinese and Taiwanese historic waters claims.²⁰⁷ It should also be noted that China, and presumably, Malaysia are the two claimant countries that strongly opposed the involvement or interference of the United States in the process of managing or settling territorial and maritime jurisdictional disputes in the SCS area. However, it seems that most, if not all, of the member countries of ASEAN welcome a continuing U.S. military presence in the region, mainly because they view the United States as the principle military deterrent to the possible use of force by the claimant countries in settling the sovereignty and maritime jurisdictional disputes in the SCS area. It is reported that the Philippines, Thailand, Indonesia, Brunei, Malaysia, and Singapore have publicly supported the U.S. role in maintaining peace and security in the Asia-Pacific region.²⁰⁸ Vietnam has adopted a similar position in recent years. As far as the SCS issues are concerned, the Philippines has been the most active country in the region, trying to get the United States to intervene in the settlement of the Spratly Islands dispute.

Vietnamese); Luu Van Loi, "Cuoc Tranh Chap Viet-Trung Ve Hai Quan Bao Hoang Sa Va Truong Sa" (Ha Noi: Nha Xuat Ban cong an Nhan Dan, 1995) (in Vietnamese); *The Hoang Sa and Truong Sa Archipelagoes (Paracel and Spratly)* (Hanoi: Vietnam Courier, 1981); Statement by the Ministry of foreign Affairs of the Socialist Republic of Viet Nam on the Hoang Sa and Truong Sa Archipelagoes, August 7, 1979, the document is available at Paracels Forum's home page <<http://members.tripod.com>>; Proclamation by the government of the Republic of Vietnam, available at Paracels Forum's home page; and Epsey Cooke Farrell, *The Socialist Republic of Vietnam and the Law of the Sea* (The Hague/Boston/London: Martinus Nijhoff Publishers, 1998), Chapter 4.

207. For more information, see Douglas Johnson, "Drawing into the Fray: Indonesia's Islands Meet China's Long Gaze South," *Asian Affairs*, Vol. 24, No.3, Fall 1997, pp. 153-161; Kenneth Whiting, "Jakarta Wants Beijing to Clarify Intentions," *China Post*, May 4, 1995, p. 5; and "No Sea Border Snags with Mainland: Indonesia," *China Post*, June 27, 1995, pp. 1-2.

208. See the United States Security Strategy for the East Asia-Pacific Region, updated November 23, 1998, available at <<http://www.defenselink.mil/pubs/easr98/>>.

CHAPTER III

THE U.S. POLICY ON THE SPRATLYS AND SOUTH CHINA SEA

INTRODUCTION

Territorial and maritime jurisdictional disputes in the Spratlys and in the remainder of the South China Sea have never been a high priority for American policy. It was during the early 1995 that the United States began to take a more active stand in dealing with the rising tensions in the area. Still, however, the United States tried to stay out of the South China Sea disputes and consistently urged the claimants to resolve their differences through dialogues and to avoid any military confrontations.

The U.S. policy on the Spratlys and the South China Sea since the late 1980s is examined below. U.S. policy under the Clinton administration, in particular during his first term in office, will be the focus of this chapter, mainly because it was on May 10, 1995 when the Department of State issued the first comprehensive official policy on the Spratly Islands and the South China Sea.

I. U.S. POLICY UNDER THE REAGAN AND BUSH ADMINISTRATIONS

In March 1988, Chinese and Vietnamese ships exchanged fire in the waters near Johnson Reef of the Spratly Islands.¹ One year later, a Spratly Front Line Headquarters was established by China to command patrolling mission in the Spratlys/South China Sea area.² These actions were viewed as the beginning of the Chinese military presence in the Spratly Islands group. The Reagan Administration adopted a low-key position during the armed conflict between China and Vietnam in the Spratly Islands in early 1988. It was the Reagan Administration's policy that the United States took no position on the merits of competing claims in the Spratly/South China Sea area; that the United States supported a peaceful resolu-

1. For a detailed Chinese report on the incident, see *People's Daily* (oversea edition), April 1, 1988, p. 1.

2. *World Journal*, March 16, 1989, p. 31.

tion of the disputes; and that the United States opposed the threat or use of force.³

Under the Bush Administration, as a result of rapid development of trade relations between the United States and the countries in the Asia-Pacific region, maintaining navigation rights in the Spratlys/South China Sea area became one of U.S. vital national interests. In addition, due to the withdrawal of U.S. military forces from the naval and air bases in the Philippines, and the withdrawal of the Soviet military forces from Vietnam, a power vacuum was believed to have existed in Southeast Asia, which made it likely for China to fill the vacuum and emerge as a hegemonic power in the region and, thus, not only threatened the security of the countries in Southeast Asia, but also increased the possibility of China's use of force to settle territorial disputes in the Spratlys/South China Sea area. Being aware of the potential impact of these potential problems on U.S. national interests, the Bush Administration began to pay more attention to the developments in the Spratly Islands/South China Sea and urged the claimant states to resort to peaceful means to settle their territorial disputes.

In March 1992, U.S. ambassador to the Philippines Frank Wisner stated during a television interview that the United States opposed the use of force to back claims to the Spratly Islands. He also reiterated the passive, non-intervention policy of U.S. on the South China Sea territorial disputes, stating that "there were limits on what [the United States] could do if fighting broke out over the South China Sea archipelago," and that the ASEAN nations themselves should mobilize political pressure to discourage any nation from using violence to pursue its claim in the area.⁴

In February 1992, China passed the "Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone,"⁵ in which China reiterated its claim to the four larger island groups in the South China Sea.⁶ Several member countries of ASEAN re-

3. "China's Syndrome: Ambiguity; What Seizing a Tiny Reef Says About Beijing's Soul," *The Washington Post*, March 19, 1995, p. C4.

4. "U.S. Says Its Options Limited on Spratlys," *The Reuter Library Report*, March 12, 1992.

5. The full text can be found in *People's Daily* (in Chinese), February 26, 1992, and the official English version is reprinted in Bureau of Oceans and International Environmental and Scientific Affairs (BOIESA), United States Department of State, *Limits in the Seas: Straight Baseline Claim: China*, No. 117, July 9, 1996, pp. 11-14.

6. See Article 2 of the law, *ibid*.

acted strongly to the law.⁷ Former U.S. Assistant Defense Secretary James Lilley also commented on the law. He said, "the Chinese passing a law on the Spratlys was particularly ill-timed."⁸ Although U.S. officials were concerned about the Chinese act in the Spratly Islands, the decision-makers in Washington did not consider China's behavior pose any immediate threat to the United States. As a result, official U.S. policy position on the Spratlys and the South China Sea — that the United States does not make judgments on legal merits of the claims, wants freedom of navigation to be preserved and supports a peaceful resolution of disputes — remained intact.

On May 8, 1992, Crestone Energy, an American oil company, signed a contract with the Chinese Offshore Oil Companies to explore oil reserves in Vanguard Bank of the Spratly Islands. The U.S. officials attended the signing ceremony. However, the spokesman of the U.S. State Department clarified that the presence of the U.S. officials in the ceremony did not imply U.S. recognition of China's claim over the ownership of the Spratly Islands.⁹ In July 1992, Secretary of State James Baker stated in Manila that the United States took no position in the Spratly Islands disputes.¹⁰ The U.S. officials also cited the Workshop on Managing Potential Conflicts in the South China Sea,¹¹ initiated by Indonesia, as one of "examples of tailor-made conflict resolution processes that can enhance regional security."¹² When the ASEAN Declaration on the South China Sea was adopted at Twenty-fifth ASEAN Ministerial Meeting on July

7. See B. A. Hamzah, "China's Strategy," *Far Eastern Economic Review*, August 13, 1992, p. 22.

8. "U.S. Defense Official Hits Timing of Chinese Claim on Spratlys," *Agence France Presse*, March 2, 1992.

9. *World Journal*, June 19, 1992, p. A2.

10. *Len He Bao* (United Daily), July 26, 1992, p. 2.

11. For more information on the Workshop, see William G. Stormont, "Report: Managing Potential Conflicts in the South China Sea," *Marine Policy*, Vol. 18, 1994, pp. 354-56; Ted L. McDorman, "The South China Sea Islands Disputes in the 1990s — A New Multilateral Process and Continuing Friction," *The International Journal of Maritime and Coastal Law*, Vol. 8, No. 2 (1993), pp. 281-82; and Mark J. Valencia, Jon M. Van Dyke, and Noel Ludwig, "The South China Sea: Approaches and Interim Solutions," paper presented at the First Technical Working Group on Legal Matters in the South China Sea, held in Phuket, Thailand, in July 1995.

12. America and Asian Security In An Era of Geoeconomics, speech given by Richard H. Solomon, Assistant Secretary for East Asian and Pacific Affairs, May 25, 1992, *U.S. Department of State Dispatch*, Vol. 3, No. 21, 1992, p. 411.

22, 1992,¹³ the United States gave its support to that declaration. U.S. Secretary of State James Baker stated during the ASEAN annual ministerial meeting in Manila in July 1992 that,

[t]he US would like to see a peaceful resolution of the various claims to the Spratlys which seems to be quite conflicting. We have taken no legal position with respect to those and it would be our hope that somehow they would be resolved peacefully.¹⁴

In his speech made before the ASEAN Post-Ministerial Conference held in Manila, Philippines on July 24, 1992, Robert B. Zoellick reiterated U.S. support for the ASEAN Declaration on the South China Sea. He also stated that

Indonesia's promotion of a dialogue on the disputed islands is a good example of what one might call preventive diplomacy. We hope and expect that this process will lead to a peaceful resolution of differences. For our part, the United States sees no justification for the use of military force to resolve conflicting territorial claims in the South China Sea. A just lasting solution to this dispute can result only from peaceful negotiations between the parties concerned, not from unilateral actions. Let me add here that the American Government is not involved in the activities of private firms that seek to operate in these disputed areas.¹⁵

In August 1992, Paul Wolfowitz of the U.S. Defense Department reaffirmed the U.S. position by suggesting that all the countries concerned should settle the disputes by peaceful means. He suggested the Workshop on Managing Potential Conflicts in the South China Sea could be used as a venue for the countries concerned to discuss and exchange different views on the disputes.¹⁶

In summary, official U.S. policy on the South China Sea issues under the Reagan Administration included the following principles:

13. For the Declaration, see Joint Communique, Twenty-Fifth ASEAN Ministerial Meeting, Manila, 21-22 July 1992, in *ASEAN Economic Bulletin*, November 1992, pp. 240-241.

14. Cited in Rodney Tasker, "End of the Sentry, US Military Withdrawal Prompts Security Fear," *Far Eastern Economic Review*, November 26, 1992, pp. 19-26.

15. US Relations with Asia and the Pacific: A New Era, statement by Robert B. Zoellick, Under Secretary for Economic and Agricultural Affairs, U.S. Department of State, before the ASEAN Post-Ministerial Conference, Manila, Philippines, July 24, 1992, *U.S. Department of State Dispatch*, August 3, 1992, p. 598.

16. *Min-zhon-zi-bao* (People Daily), Taipei, Taiwan, August 5, 1992, p. 3.

- the United States took no position on the merits of competing claims in the Spratly/South China Sea area;
- it supported a peaceful resolution of the disputes; and
- it opposed the threat or use of force.

The Bush Administration adhered to the three policy positions taken by its previous government, but added the following:

- the United States gave its support for the South China Sea Workshop convened for managing potential conflicts in the area; and
- it welcomed and supported the ASEAN Declaration on the South China Sea which called for a peaceful settlement of disputes.

II. THE CLINTON ADMINISTRATION

During the first two years of the Clinton Administration, official U.S. policy position on the Spratlys and the South China Sea remained the same. Washington did not take a position on the legal merits of any party's claims and supported a peaceful resolution. However, it is worth noting that for the first time, the 11th ASEAN-US Dialogue, which was held in Brunei on May 15-16, 1993, included in its agenda international and regional political and security issues. These issues of mutual concern between U.S. and the ASEAN states include the territorial disputes in the South China Sea. When the Spratly issue was discussed at the meeting, the U.S. participants stated that it welcomed the confidence-building measures introduced to manage potential conflicts in the area, including a series of South China Sea Workshops convened for this purpose. In addition, U.S. reaffirmed its support for the ASEAN Declaration on the South China Sea. Moreover, Washington reiterated its policy of not taking any position on the validity of the competing claims, but supporting the process of peaceful settlement.¹⁷

In August 1993, it was reported that China and Vietnam held the first round of boundary talks at the deputy foreign ministerial level in which they agreed on principles for settling their territorial disputes. Also in August of that year, the Fourth South China Sea Workshop was held in Indonesia. Seeing a reduction of tensions and the development of an increasingly conciliatory climate in the South China Sea area, the U.S. government took an optimistic view

17. See ASEAN Relations with the Dialogue Countries, ASEAN-United States, *ASC Annual Report 1992-1993*, available at <<http://www.aseansec.org/asc/r9293/asc92d8.htm>>.

regarding possible resolution of the Spratly disputes.¹⁸ Unfortunately, this optimistic view did not last long before tensions flared anew in the South China Sea's highly petroleum prospective Spratly Islands during the first half of 1994.

In April 1994, it was reported that Crestone Energy Corp., which signed a contract with China to explore oil and natural gas in the southwest part of the disputed Spratly Islands in May 1992, was to begin seismic and exploratory drilling in the contract area Wan'an Bei Block WAB-21.¹⁹ In support of the announced exploration project, the Chinese Ministry of Foreign Affairs declared that Crestone contract is absolutely legal and that "China's sovereignty over the Spratly Islands and its adjacent waters is indisputable."²⁰ In response, Vietnam's Foreign Affairs Ministry issued a strongly worded statement in early May 1994, reaffirming the country's sovereignty over the Spratly Islands. The ministry also asserted Vietnam's exclusive right to an area west of the Spratlys where Crestone Energy Corp. was to conduct exploration projects.²¹ In addition, also in May 1994, Vietnam leased a block containing the promising Blue Dragon structure to a consortium that includes Mobil, another American oil company. The structure is located just west of Crestone's contract area and within the Chinese claimed waters.²² In June 1994, China denounced Vietnam for violating its "indisputable sovereignty" over islands in the South China Sea and demanded Vietnam immediately stop the exploration activities in waters west of Wan'an Tan (Vanguard Bank).²³ One month later, it was reported that China had deployed two warships in the South China Sea to prevent Vietnam from re-supplying the rig which was drilling in a corner of Crestone's contract area. It was believed that the warship had turned away at least one Vietnamese vessel that tried to reach the rig.²⁴ It was also reported that U.S. officials warned the two American oil companies which had signed contracts with China and Vietnam respectively to explore for oil in the disputed Spratly Islands. Winston Lord, U.S. Assistant Secretary of State for East Asian and Pacific Affairs, stated that "[a]lthough we

18. See John F. Morton, "US Optimistic that Spratly Islands Dispute Will resolve Peacefully," *Asian Defense Journal*, December 1993, p. 36.

19. *The Oil Daily*, Vol. 44, No. 76, April 20, 1994, p. 3.

20. *United Daily News* (Taipei), May 24, 1994, p. 10.

21. *The Oil Daily*, Vol. 44, No. 87, May 6, 1994, p. 7.

22. Barry Wain, "Beijing and Hanoi Play with Fire in S. China Sea," *The Asian Wall Street Journal*, July 20, 1994, p. 5.

23. "Vietnam Blasted Over Spratlys," *China Post* (Taipei), June 17, 1994, p. 2.

24. *United Daily News*, July 22, 1994, p. 1.

don't forbid them [American companies] to do business there or to explore, we have pointed out the possible risks involved with overlapping territorial claims. This does add another dimension to the problem."²⁵

As tensions gradually intensified in the Spratly area by the actions and counter-actions taken by China and Vietnam, U.S. domestic concerns also increased. In September 1994, an international conference on the South China Sea territorial disputes was held at the American Enterprise Institute, an influential American think tank located in Washington, D.C. Jeane J. Kirkpatrick, former U.S. representative to the United Nations and a member of the cabinet during the Reagan administration, and James Lilley, assistant secretary of defense for international security affairs between 1991 to 1993, participated in the conference. The conference, attended by 100 scholars from the U.S., member countries of the ASEAN, Vietnam, Australia, the United Kingdom, China, Taiwan, and others, examined economic and environmental, security, and sovereignty issues in relation to disputes in the South China Sea. Jane J. Kirkpatrick raised a couple of questions regarding China's intentions in the South China Sea area in a keynote speech she gave during the conference. She asked: "[w]ill China use force to confirm its claims [in the South China Sea]; and, if so, how much force, against what and whom? And if China were to use force to consolidate control of one or more islands, what would happen then?"²⁶ She argued that these were not idle questions, but "we do not know their answers."²⁷ While not knowing the real intentions of China and waiting for the Chinese leaders to clarify their intentions in the South China Sea area, Kirkpatrick suggested that Washington should clearly communicate its intentions to cooperate and its expectations that the South China Sea would be developed and the resources exploited on the basis of negotiation, agreement, and recognized international norms.²⁸ It is important to note that a copy of draft statement entitled "United States Government Policy on the Spratly Islands and the South China Sea" was circulated among the participants at the end of the conference, which read as the following:

25. "U.S. Companies Warned of Risks," *China Post* (Taipei), July 21, 1994, p. 2.

26. Jeane J. Kirkpatrick, "A Question of Intent: What Is China Up to in the South China Sea?" *The American Enterprise*, Vol. 5, No. 6, November/December 1994, p. 65.

27. *Ibid.*

28. *Ibid.*, p. 75.

- The U.S. urges peaceful settlement of the issue by the countries involved in a manner that enhanced regional peace, prosperity, and security;
- The U.S. strongly opposes the threat or use of military force to assert any nation's claims to South China Sea territories and would view any such use as a serious matter;
- The U.S. takes no position on the legal merits of competing sovereignty claims and is willing to help in the peaceful resolution of the competing claims if requested by the parties.

Based upon these fundamental principles,

- [t]he U.S. strongly supports Indonesia's ongoing effort to develop a peaceful solution to this contentious issue. [The United States] urge[s] all involved to work seriously within the framework provided by Indonesia;
- [The United States] believe[s] the peaceful development of the resources of the region in the best way of benefiting all concerned;
- At the 1992 and 1993 [ASEAN] Post-Ministerial Conferences, the U.S. expressed this support, welcomed the ASEAN Ministerial Meeting's Declaration on the South China Sea, and offered to be helpful in any way the parties believe useful;
- [The U.S.] ha[s] informed U.S. companies of the competing claims and ha[s] strongly recommended that US citizens and companies act with predence in disputed areas; [the United States] ha[s] pointed out the risks of conducting on-site activities in these areas until the contestants have first reached agreements on their development.²⁹

Since late 1994, as a result of the revision of its security strategy for the Asia-Pacific region, U.S. Defense Department also began to pay more attention to the Spratlys/South China Sea issues. During the Cold War period, the Defense Department did not consider the Spratlys/South China Sea area as one of the world's major flash points. However, beginning in October 1994, the Defense Department has included the Spratlys/South China Sea in the list, together with the Korean Peninsula, the Taiwan Strait, and South

29. United States Government Policy on the Spratly Islands and the South China Sea, a copy of the draft is on file with the author.

Asia, which showed the areas in Asia where armed conflicts were likely to occur.³⁰ In February 1995, the Defense Department published a report, entitled "United States Security for the East Asia-Pacific Region," in which U.S. concerns over the Spratly Islands disputes and the South China Sea issues were spelled out. The report stated that "[c]ontested claims to islands and territorial waters in the South China Sea are a source of tension in Southeast Asia that could carry serious consequences for regional stability."³¹ The official U.S. policy on the sovereignty and maritime jurisdictional disputes in the South China Sea was also reiterated in the report:

- the United States urges peaceful settlement of South China Sea issues;
- it strongly opposes the threat or use of military force to assert any nation's claim;
- it takes no position on the legal merits of the competing claims;
- it is willing to assist in the peaceful resolution of the dispute;
- it gives support for the multilateral approaches to regional security problems.³²

In addition, the report asserted that the U.S. strategic interest in maintaining the lines of communication linking Southeast Asia, Northeast Asia and the Indian Ocean make it essential that the U.S. resists any maritime claims beyond those permitted by the 1982 LOSC.³³ Although the statements could be applied to any excessive maritime claims in the South China Sea, it was suggested by Mark Valencia that the wordings were most likely aimed at China's claims.³⁴

As noted earlier, during the first two years of the Clinton Administration, the United States did express its concern over the Spratly disputes and the potential armed conflicts arising from the territorial disputes in the South China Sea. Nevertheless, Washington's position of non-intervention remained intact.³⁵ It was after the discovery of Chinese-built structures on Meji Jiao (Mischief Reef),

30. *Len-He-Bao* (United Daily, Hong Kong), December 14, 1994, p. 2.

31. Office of International Security Affairs, U.S. Department of Defense, *United States Security for the East Asia-Pacific Region*, February 1995, p. 19.

32. *Ibid.*, p. 20.

33. *Ibid.*

34. Mark J. Valencia, "China and the South China Sea Disputes," *Adelphia Paper* 298, the Institutional Institute for Strategic Studies, Oxford University, 1995, p. 27.

35. "Treacherous Shoals," *Far Eastern Economic Review*, August 13, 1992, p. 17.

135 nautical miles (170 kilometers) west of the Philippine islands of Palawan, in February 1995 that the U.S. position gradually started to change.³⁶

After the discovery of the Chinese-built structures on the reef, tensions in the Spratly Islands were escalated quickly by actions and counter-actions taken by the two disputed parties. For instance, Fidel Ramos, President of the Philippines, ordered to re-deploy the country's entire combat air force to the Spratly Islands area. In addition, Ramos gave order to destroy Chinese sovereignty markers that had been placed on the disputed reefs in the area.³⁷ Moreover, the Philippines seized four Chinese fishing boats near Half Moon Shoal and arrested 62 crew members, charging them illegally fishing in the Philippine EEZ.³⁸ On March 25, 1995, Taiwanese forces fired on a Vietnamese freighter which had strayed into a restricted area around Itu Aba (Tai-pin), the largest island in the Spratly Islands group. Later that month, Taiwan announced that three patrol boats of its maritime police would be sent to the Spratlys.³⁹ Warships had also been sent to the disputed area from China.

Concerning about the on-going conflicts between China and one of its allies in the South China Sea, on February 14, 1995, the U.S. State Department urged the two parties to resolve disputes by peaceful means. At the same time, the United States reiterated its long-standing neutral position on the merits of competing sovereignty claims.⁴⁰ Admiral Richard Macke, the commander-in-chief of U.S. Pacific Command stated before the Senate Appropriations Committee's defense panel that "dialogue rather than isolation or confrontation" is still the best approach to dealing with China.⁴¹ Believing that China posed no near-term threat to American interests in Asia, he advised President Fidel Ramos of the Philippines to seek a "diplomatic" resolution of territorial disputes with China. He

36. For the event, see "Territorial Imperative," *Far Eastern Economic Review*, February 23, 1995, pp. 14-16; and "Making Mischief," *The Economist*, February 18, 1995, p. 28.

37. "Philippines Blow Up Chinese Markers in Spratlys," *Reuters World Service*, March 23, 1995.

38. "Long Shadow: Southeast Asians Have China on Their Mind," *Far Eastern Economic Review*, December 28, 1995 and January 4, 1996, p. 18.

39. The mission was later called off in response to international concerns that such a move would be destabilizing at the time.

40. "Washington Urges Peaceful Solution to Spratly Disputes," *Agence France-Presse*, February 14, 1995.

41. Eduardo Lachica, "Admiral Urges 'Dialogue' As China's Military Grows," *The Asian Wall Street Journal*, February 16, 1995, p. 2.

urged the Philippines and other claimants to accept the Indonesian proposal for a diplomatic settlement of these disputes. In addition, he also suggested that the South China Sea issues should be raised at the Second ARF meeting to be held in Brunei in summer 1995.⁴²

On March 19, 1995, Robert A. Manning of the Progressive Policy Institute and James J. Przystup of the Heritage Foundation, members of the two U.S. influential think-tanks, wrote an article published in the *Washington Post*, in which they proposed that the U.S. government should take the following actions: (1) to actively support the ASEAN Manila Declaration on the South China Sea adopted in July 1992; (2) to support Indonesia's efforts to transform the informal Workshop on Managing Potential Conflicts in the South China Sea into an official negotiation forum under the auspices of either ASEAN Regional Forum (ARF) or the U.N. Security Council; (3) to provide surplus military equipment to the Philippines and if financially feasible, selling new aircraft and patrol boats to Manila; and (4) to arrange for a U.S. warship port call to Cam Ranh Bay in Vietnam and to begin discussions with Hanoi for regular access to Cam Ranh Bay and military-to-military dialogue.⁴³

U.S. concern over the conflict in the Spratly Islands was further communicated by Secretary of State Cristopher to the Chinese Foreign Minister Qian Qichen who visited New York in mid-April 1995. The Secretary made clear to the Chinese minister the U.S. stance on the South China Sea issue. He also stressed that the United States strongly opposed the use or threat of force in settling the Spratly disputes.⁴⁴ On May 10, 1995, the U.S. Department of State issued "the most comprehensive statement on the Spratlys," as one report described.⁴⁵ The policy statement outlined the principles for dealing with the South China Sea issues, which include:

The United States is concerned that a pattern of unilateral actions and reactions in the South China has increased tensions in that region. The United States strongly opposes the use of threat of force to resolve competing claims and urges all claimants to exercise restraint and to avoid destabilizing actions.

42. *Ibid.*

43. "China' Syndrome," *Washington Post*, March 19, 1995, p. C4.

44. *United Daily News*, April 21, 1995, p. 10.

45. "Dispute Over Islands and China's Gunboats Roiling Asian Waters," *Washington Post*, June 5, 1995, p. A14.

The United States has an abiding interest in the maintenance of peace and stability in the South China Sea. The United States calls upon claimants to intensify diplomatic efforts which address issues related to competing claims, taking into account the interests of all parties, and which contribute to peace and prosperity in the region. The United States is willing to assist in any way that claimants deem helpful. The United States reaffirms its welcome of the 1992 ASEAN Declaration on the South China Sea.

Maintaining freedom of navigation is a fundamental interest of the United States. Unhindered navigation by all ships and aircraft in the South China Sea is essential for the peace and prosperity of the entire Asia-Pacific region, including the United States.

The United States takes no position on the legal merits of the competing claims to sovereignty over the various islands, reefs, atolls and cays in the South China Sea. The United States would, however, view with serious concern any maritime claim, or restriction on maritime activity, in the South China Sea that was not consistent with international law, including the 1982 United Nations Convention on the Law of the Sea.⁴⁶

According to Christine Shelly, the State Department's acting spokesperson, "this is a stronger statement" and "a stronger expression of [the U.S.] concerns," in particular with regard to U.S. freedom of navigation.⁴⁷

Three days after the issuance of the policy statement, on May 13, 1995, the Philippine government invited Philippine and foreign journalists to sail on a vessel escorted by two Philippine warships to the waters near by the disputed Mischief Reef for "news gathering" activities.⁴⁸ In response to this event, a Chinese foreign ministry spokesman issued a harsh statement, which

46. Spratlys and the South China Sea, Statement by Christine Shelly, Acting Spokesman, May 10, 1995. The statement can be found in U.S. Interest in Southeast Asia, *Hearing* before the Subcommittees on International Economic Policy and Trade and Asia and the Pacific of the Committee on International Relations, House of Representatives, 104th Congress, 2nd Session, May 30 and June 19, 1996 (Washington, D.C.: GPO, 1997), p. 157.

47. See "State Department Regular Briefing," *Federal News Service*, May 10, 1995.

48. It was reported that the Philippine vessel was obstructed by two Chinese vessels in the waters near Mischief Reef for 70 minutes. See "Dispute over Islands and China's Gunboats Roiling Asian Waters," *Washington Post*, June 5, 1995, p. A14.

advise[d] the Philippine side not to misinterpret the Chinese side's restraint. The Philippine side had better return to the correct course of settling the relevant dispute through peaceful talks. If the Philippine side continues to act willfully and recklessly, it should be responsible for all consequences arising therefrom.⁴⁹

In response to the Chinese statement, the U.S. State Department spokesman Nicholas Burns in a press meeting criticized China for using such strong languages with its inflammatory statement. The U.S. spokesman further stated that China should refrain from making such declarations.⁵⁰ On June 16, 1995, Joseph Nye, Assistant Secretary of Defense for International Security, talked to a group of Japanese journalists. In his remarks, Nye said that if military actions occurred in the Spratly Islands area and thus interfered with freedom of navigation, then the United States would take action to ensure that free navigation in the area was restored.⁵¹ Although the Pentagon played down the importance of Nye's remark, defense analysts gave the statement much more importance, saying that "it's the first time there's been mention of the physical involvement of America in a possible conflict" in the Spratlys/South China Sea area.⁵²

III. THE U.S. CONGRESS AND THE SOUTH CHINA SEA DISPUTE

As the Philippine-Chinese conflict in the Spratly Islands gradually escalated, the U.S. Congress' concern over the event also increased. On March 10, 1995, Benjamin A. Gilman, a member of the U.S. House of Representatives, introduced a resolution (H.Res. 114), which was "designed to focus attention on peace and stability in the South China Sea which is a matter of strategic national interest to the United States, its friends, and allies."⁵³ The resolution asked the House of Representatives:

49. "Trip is 'Serious' Infringement," Beijing, May 16, 1995. Quoted in "The Spratly Islands," Congressional Record — Senate, 104th Congress, 1st Session, 141 Cong. Rec S7386, May 24, 1995.

50. "U.S. Asks China to cool Rhetoric on Territorial Dispute," *Associated Press*, May 17, 1995.

51. "Jolt From the Blue," *Far Eastern Economic Review*, August 3, 1995, p. 22.

52. *Ibid.*

53. "Peace and Stability in the South China Sea," Congressional Record — Extension of Remarks, 104th Congress, 1st Session, 141 Cong Rec E 577, March 10, 1995.

- (1) to declare the right of free passage through the South China Sea to be in the national security interests of the United States, its friends, and allies;
- (2) to declare that any attempt by a nondemocratic power to assert, through the use of force or intimidation, its claims to territory in the South China Sea to be a matter of grave concern to the United States;
- (3) to call upon the Government of the People's Republic of China to adhere faithfully to its commitment under the Manila Declaration of 1992; and
- (4) to call upon the President of the United States to review the defense needs of democratic countries with claims to territory in the South China Sea.⁵⁴

On March 30, 1995, a similar resolution (Senate Resolution 97) was introduced in the Senate, in which the Senate

- (1) urges the executive branch to reiterate to the claimants in the South China Sea that the United States does not take a position on any individual claim;
- (2) calls upon all of the claimants to refrain from using military force to assert or expand territorial claims in the South China Sea;
- (3) urges the executive branch to declare the active support of the United States for the 1992 Manila Declaration on the Association of South East Asian Nations, and calls upon all the claimants to observe faithfully its provisions; and
- (4) calls upon the claimants to scrupulously observe the January, 1995 status quo ante pending any negotiations or resolution of the conflicts between such claimants over such claims.⁵⁵

The resolution was co-sponsored by twelve senators, including Jesse Helms, and was adopted by the Senate with amendments and an amended preamble on June 22, 1995. It is worth noting that the agreed upon Senate resolution stressed that the United States would view with "profound concern and disapproval any maritime

54. *Id.*, E578.

55. "Senate Resolution 97 — Relative to the South China Sea," Congressional Record — Senate, 104th Congress, 1st session, 141 *Cong Rec* S 4932, March 30, 1995. The resolution was amended and then agreed to on June 22, 1995. See "Expressing the Sense of the Senate with Respect to Peace and Stability in the South China Sea," Congressional Record — Senate, 104th Congress, 1st session, 141 *Cong Rec* S 8962, June 22, 1995.

claims or restrictions on maritime activity in the South China Sea area not strictly consistent with international law.”⁵⁶

In a bill (American Overseas Interests Act of 1995) introduced in the House of Representatives on May 3, 1995,⁵⁷ there contained a section on peace and stability in the South China Sea, in which policy findings of the U.S. Congress included the following:

- (1) The South China Sea is a critically important waterway through which 25 percent of the world’s ocean freight and 70 percent of Japan’s energy supplies transit;
- (2) The South China Sea serves as a crucial sea lane for United States Navy ships moving between the Pacific and Indian Oceans, particularly in time of emergency;
- (3) There are a number of competing claims to territory in the South China Sea;
- (4) The 1992 Manila Declaration adhered to by the Association of South East Asian Nations, the Socialist Republic of Vietnam, and the People’s Republic of China calls for all claimants to territory in the South China Sea to resolve questions of boundaries through peaceful negotiations;
- (5) The legislature of the People’s Republic of China has declared the entire South China Sea to be Chinese territorial waters;
- (6) The armed forces of the People’s Republic of China have asserted China’s claim to the South China Sea through the kidnapping of citizens of the Republic of the Philippines and the construction of military bases on territory claimed by the Philippines;
- (7) These acts of aggression committed by the armed forces of the People’s Republic of China against citizens of the Philippines are contrary to both international law and to peace and stability in East Asia.⁵⁸

Based upon these findings, the Congress

- (1) declares the right of free passage through the South China Sea to be vital to the national security interests of the United States, its friends, and allies;

56. *Ibid.*

57. Congressional Record — House, 104th Congress, 1st session, 141 *Cong Rec H* 5191, May 17, 1995.

58. Section 3310(a) Findings, *ibid.*

- (2) declares that any attempt by a nondemocratic power to assert, through the use of force or intimidation, its claims to territory in the South China Sea to be a matter of grave concern to the United States;
- (3) calls upon the Government of the People's Republic of China to adhere faithfully to its commitment under the Manila Declaration of 1992; and
- (4) calls upon the President to review the defense needs of democratic countries with claims to territory in the South China Sea.⁵⁹

The House Committee on International Relations strongly believed that most of the naval and air assets in the Philippines were limited by a lack of spare parts and were decades out of date. Accordingly, it was necessary for the United States to review the defense needs of all the democratic claimants to territories in the South China Sea, and particularly, the Philippines.⁶⁰ The bill passed in the House of Representatives on June 8, 1995. However, the bill was vetoed by President Clinton on April 12, 1996, and the House was unable to muster the two-thirds majority to override. Had it passed, the bill would have, *inter alia*, declared right of free passage in the South China Sea to be vital to U.S. national interests, called on China to adhere to the 1992 ASEAN Declaration on the South China Sea, and called upon President Clinton to review defense needs of democratic countries with claims in South China Sea.⁶¹ President Clinton vetoed the bill on the following grounds:

[i]t would unacceptably restrict the President's ability to address the complex international challenges and opportunities of the post-Cold War era. It would also restrict Presidential authority needed to conduct foreign affairs and to control state secrets, thereby raising serious constitutional concerns.⁶²

The U.S. Congress' concerns over the South China Sea issues and China's behavior in the disputed Spratly Islands were also expressed in other legislative measures proposed by members of the

59. Section 3310 (b) *Policy Declarations*, *ibid.*

60. See American Overseas Interests Act of 1995, Report of the Committee on International Relations, House of Representatives, on H.R. 1561 together with minority and Additional Views, May 19, 1995, House of Representatives, Rept. 104-128, Part I.

61. See Kerry Dumbaugh, "China-U.S. Relations," *CRS Issue Brief*, No. 94002, November 25, 1996.

62. See American Overseas Interests Act — Veto Message from the President of the United States, House Document No. 104-197, in *Cong. Rec.* H 3304, April 15, 1996.

House of Representatives. For instance, both H.R. 2053 and H.R. 2058, introduced in the House on July 18, 1995 and July 19, 1995 respectively, contained language such as "the Congress calls upon the President to undertake intensified diplomatic initiatives to persuade the Government of the People's Republic of China to end provocative military actions in the South China Sea and elsewhere that threaten China's neighbors, and work with them to resolve disputes in a peaceful manner."⁶³

Before proceeding to Chapter IV and examining the outcomes of the U.S. South China Sea policy, it is important to mention three additional policy elements that were developed under the Clinton administration in 1993 and 1994. The three policy elements had influenced and will continue to affect the policy making of the U.S. policy on the Spratly Islands and the South China Sea. The first one was the recognition of the utility of the 1982 LOSC for U.S. security interests and thus the necessity of U.S. accession to the Convention; and the second one was the appreciation of the usefulness of multi-lateral approaches adopted to help deal with regional security issues, in particular the territorial disputes in the Spratlys and the South China Sea. The third policy element is the shift from a policy of containment toward China to a policy of comprehensive engagement with China.

IV. THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA AND U.S. SECURITY INTERESTS

In July 1993, a report entitled "United States Interests in the Law of the Sea Convention" was adopted by the Panel on the Law of Ocean Uses,⁶⁴ in which it was argued that the 1982 LOSC adequately protects U.S. security and economic interests in maximum mobility, helps maintain order and stability in the ocean, and facilitates global environmental protection. The report concluded:

63. H.R. 2053 (Establishing United States policy toward China) and H.R. 2058 (Establishing United States policy toward China), 1104th Congress, 1st Session, July 18 and July 19, 1995.

64. The Panel on the Law of Ocean Uses is an independent group of specialists in ocean law and policy sponsored by the Council on Ocean Law, and funded by the John D. and Catherine T. MacArthur foundation. Members of the Panel are: Louis Henkin, James M. Broadus, Jonathan I. Charney, Thomas A. Clingan, Jr., John Hargrove, Jon L. Jacobson, Teny L. Leitzell, Edward L. Miles, J. Daniel Nyhart, Bernard H. Oxman, Giulio Pontecorvo, Horace B. Robertson, Jr., Louis B. Sohn, and James Storer. The report was re-printed in *American Journal of International Law*, Vol. 88, 1994, pp. 167-178.

[w]idely ratified Convention [on the Law of the Sea] would protect and advance U.S. security, economic, and environmental interests as well as provide a stable legal basis for peaceful dispute resolution. Therefore, the United States should undertake urgently to remove obstacles to the widespread ratification of the convention, including ratification by the United States.⁶⁵

In an ocean policy review paper prepared by the U.S. Department of Defense in 1993, it was concluded, *inter alia*, that “[a] stable law of the sea regime embodying traditional freedom of navigation and overflight is vital to U.S. security interests” and that “the United States has much to gain in assuming a leadership in the ongoing U.N. effort to reform the deep seabed mining regime, removing the principal obstacle to broad international acceptance of the 1982 Law of the Sea Convention.”⁶⁶ The stated major obstacle to widespread ratification of the 1982 LOSC, namely Part XI (relating to deep sea-bed regime) of the Convention, was finally removed. The Agreement Relating to the Implementation of Part XI of the Convention on the Law of the Sea (hereinafter the 1994 Agreement)⁶⁷ was adopted by United Nations General Assembly Resolution A/RES/48/263 on July 28, 1994, which incorporated legally binding changes in the deep sea-bed mining provisions of the Convention that satisfactorily addressed the objections of the U.S. and other industrialized countries. In July 1994, it was argued in a Department of Defense Report on National Security and the Convention on the Law of the Sea that “[t]he national security interests in having a stable ocean regime are, if anything even more important today than in 1982 when the world had a roughly bipolar political dimension and the U.S. had more abundant forces to project power to wherever it was needed.”⁶⁸ The report concluded that “[a] universal regime for governance of the ocean is needed to safeguard U.S. security and economic interests, as well as to defuse those situations in which competing uses of the oceans are likely to result in conflict. . . . Historically, this nations’s security has depended upon the ability to conduct military operations over, under, and on the

65. *Ibid.*, p. 178.

66. For the DOD Ocean Policy Review Paper, 1993, see Current Status of the Convention on the Law of the Sea, *Hearing* before the Committee on foreign Relations, United States Senate, 103rd Congress, 2nd Session, August 11, 1994, p. 76.

67. For the Agreement, see U.N. Doc. A/48/L/60 (June 22, 1994).

68. National Security and the Convention on the Law of the Sea, prepared by the U.S. Department of Defense, July 1994, p. 3.

oceans. The best guarantee that this free and unfettered access to the high seas will continue in the years ahead is for the U.S. to become a party to the Convention, as modified by the Agreement, at the earliest possible time.”⁶⁹ As a result, the United States signed the Agreement on July 28, 1994. On September 23, 1994, Warren Christopher, Secretary of State, submitted the 1982 LOSC and the 1994 Agreement to President Clinton, asking him to transmit the two documents to the Senate for its advice and consent to accession and ratification, respectively.⁷⁰ On October 7, 1994, President Clinton transmitted the 1982 LOSC and the 1994 Agreement together as a package to the Senate for advice and consent.⁷¹

While the U.S. accession to the 1982 LOSC was still pending in May 1995, it was written in an official U.S. policy statement on Spratlys and the South China Sea that “[t]he United States would, . . . view with serious concern any maritime claim, or restriction on maritime activity, in the South China Sea that was not consistent with international law, including the 1982 United Nations Convention on the Law of the Sea.”⁷² In addition, it was argued that “U.S. interests are better served by efforts to persuade the contesting parties [in the South China Sea] to follow international law, including newly effective 1982 U.N. Convention on the Law of the Sea, and find a diplomatic solution.”⁷³ It was believed that the U.S. ability to influence a peaceful settlement of the Spratly Islands dispute would be enhanced by U.S. accession to the 1982 LOSC.⁷⁴ Another commentator suggested that sovereignty claims in the South China Sea should be resolved through international law and the 1982 LOSC.

69. *Ibid.*, p. 18.

70. For the Secretary’s Submittal Letter, see Law of the Sea Convention: Letter of Transmittal and Submittal and Commentary, *U.S. Department of State Dispatch Supplement*, February 1995, Vol. 6, No. 1, pp. 2-5.

71. For President Clinton’s Transmittal Letter, *ibid.*, p. 1.

72. Spratlys and the South China Sea, Statement by Christine Shelly, Acting Spokesman, May 10, 1995. The statement can be found in U.S. Interest in Southeast Asia, *Hearing* before the Subcommittees on International Economic Policy and Trade and Asia and the Pacific of the Committee on International Relations, House of Representatives, 104th Congress, 2nd Session, May 30 and June 19, 1996 (Washington, D.C.: GPO, 1997), p. 157.

73. Keith W. Eirinberg, “U.N. Maritime Pact Could Produce South China Sea Solution,” *The Washington Post*, May 26, 1995, cited in Congressional Record — Senate, S9197, June 27, 1995.

74. *Ibid.*, Congressional Record — Senate, S9198, June 27, 1995.

For its own credibility, however, the United States needs to complete ratification of the 1982 LOSC.⁷⁵

V. THE IMPORTANCE OF MULTILATERAL APPROACHES

The second policy adjustment made during the Clinton administration in the years between 1993 and 1995 was the recognition of the importance of multilateral approaches to help deal with regional security issues in the Asia Pacific, in particular the territorial disputes in the South China Sea. During the Cold War era, the United States relied upon the San Francisco system of U.S. bilateral defense treaties to provide stability in the Asia-Pacific region. Although it had been proposed to move beyond the bilateral structure of U.S. Cold-War security arrangements to deal with regional security problems in the region, Washington was reluctant to do so. It was not until the end of the Cold War in the late 1980s, along with the withdrawal of Soviet military forces from Vietnam and the complete withdrawal of U.S. military troops from the naval and air force bases in the Philippines in 1992, that U.S. security policy started to change. Before 1993, U.S. security policy toward the Asia-Pacific was based on the five bilateral alliances and other bilateral defense ties, as well as the maintenance of forward military presence in Asia. But since President Clinton's first overseas trip to Japan and Korea in July 1993, U.S. security policy in Asia and the Pacific has built upon the three pillars: bilateral alliances, military forward presence, and active participation in regional security dialogues.⁷⁶ As President Clinton stated at the South Korean National Assembly on July 10, 1993 that

75. Lloyd R. Vasey, "Collision in the China Sea — World Oil and Shipping Lanes at Stake in Multinational Dispute," *The Christian Science Monitor*, June 22, 1995, cited in Congressional Record — Senate, S9198, June 27, 1995.

76. While adding regional security dialogues as one of the three pillars of its security policy in Asia and Pacific region, the U.S. government stressed that this new pillar supplements, but not replaces U.S. treaty alliances and military forward presence. See East Asia and the Pacific: U.S. Policy and Assistance, Winston Lord, Assistant Secretary for East Asian and Pacific Affairs, Statement before the Subcommittee on Asian and Pacific Affairs of the House Foreign Affairs Committee, Washington, D.C., May 6, 1993, in *U.S. Department of State Dispatch*, Vol. 4, No. 21, May 24, 1993, p. 381; The United States: A Full Partner in a New Pacific Community, U.S. Secretary of State Warren Christopher's statement made at the Six-plus-Seven Open Session of the ASEAN Post-Ministerial Conference, Singapore, July 26, 1993, in *U.S. Department of State Dispatch*, Vol. 4, No. 31, August 2, 1993, p. 549; Vision for a New Pacific Community, Winston Lord, Assistant Secretary for East Asian and Pacific Affairs, Opening statement at news briefing, Washington, August 31, 1993, in *U.S. Department of State*

I believe the time has come to create a new Pacific Community built on shared strength, shared prosperity, and a shared commitment to democratic values. . . . We also need new regional security dialogues. This month's ASEAN post-ministerial conference in Singapore, in which the United States will attend, offers an immediate opportunity to further such a dialogue.⁷⁷

Warren Christopher, U.S. Secretary of State, addressed at the 26th ASEAN Post-Ministerial Conference, July 26-28, 1993, that

[b]ecause of continued security threats, the U.S. places great value on our treaty alliances with Thailand and the Philippines. We are also encouraged by the steady progress that we have made in strengthening our bilateral defense ties with each of the ASEAN countries. These alliances and other bilateral defense arrangements reflect our shared interest in maintaining security and stability in this region. . . . While alliances and bilateral defense relationships will remain the cornerstone of American strategy in Southeast Asia, the Clinton Administration welcomes multilateral security consultations — especially within the framework of the PMC. Such consultations can help reduce tensions, enhance openness, and discourage arms races and other destabilizing actions.⁷⁸

In his remarks made at the Japan Society, New York City, on September 12, 1995, Secretary of Defense William J. Perry also stated that the best way to prevent or deter conflict in the Asia-Pacific region is to remain fully engaged by maintaining military forward presence, reinforcing treaty alliances, developing bilateral and multilateral relationships and by developing dialogues that promote confidence- and security-building measures (CSBMs).⁷⁹

Dispatch, Vol. 4, No.36, September 6, 1993, p. 613; America's Pacific Future, Warren Christopher, Secretary of State, Address at the University of Washington, Seattle, Washington, November 17, 1993, in *U.S. Department of State Dispatch*, Vol. 4, No. 48, November 29, 1993, p. 820.

77. For the address, see *Weekly Compilation of Presidential Documents*, Vol. 29, No. 28, July 19, 1993, p. 1310, 1312.

78. Statement by H.E. Mr. Warren Christopher, Secretary of State of the United States of America, at the 26th AMM/PMC, July 26-28, 1993, the text of the statement is available at <<http://www.aseansec.org/amm/pmc26u2.htm>>.

79. "Ever Vigilant in the Asia-Pacific Region," remarks by Secretary of Defense William J. Perry to the Japan Society, New York City, September 12, 1995, American Forces Information Service, *Defense Viewpoint*, Vol. 10, No. 87, available at <<http://www.defenselink.mil/speeches/1995/di1087.html>>.

As a result of this policy change, the United States began to pay more attention to the development of multilateral forums for security consultations, such as the ASEAN Post Ministerial Conference (PMC), the ARF, the CSCAP, and the South China Sea Workshop. The United States recognized ASEAN's valuable contribution to regional peace; it supported the establishment of the ARF in July 1993; it promised to actively participate in the first meeting of the ARF in Bangkok in July 1994 and future ASEAN PMCs; and it supported the Workshop efforts, led by Indonesia, for peaceful settlement and the development of resources in the South China Sea.

At the fourth ASEAN Summit, held on January 28, 1992, the heads of state and government of ASEAN agreed, *inter alia*, that

ASEAN could use established fora to promote external dialogues on enhancing security in the region as well as intra-ASEAN dialogues on ASEAN security cooperation (such as . . . the workshops on the South China Sea held in Bali in 1990 and Bandung in 1991), taking full cognizance of the Declaration of ASEAN Concord. To enhance this effort, ASEAN should intensify its external dialogues in political and security matters by using the ASEAN Post Ministerial Conferences (PMC).⁸⁰

At the fifth ASEAN Summit, the leaders of member countries of ASEAN also agreed to "seek an early, peaceful resolution of the South China Sea dispute and continue to explore ways and means to prevent conflict and enhance cooperation in the South China Sea consistent with . . . the ASEAN Declaration of the South China Sea of 1992 as well as international law including the United Nations Convention on the Law of the Sea."⁸¹ On March 18, 1995, in response to the tensions escalated in the Spratly area, the ASEAN foreign ministers issued a statement on the South China Sea to demonstrate ASEAN's solidarity on the issue, in which they

- expressed serious concern over recent developments which affect peace and stability in the South China Sea;

80. For the Singapore Declaration issued at the end of the Fourth ASEAN Summit, visit ASEAN home page at <<http://www.aseansec.org/summit/summit4.htm>>.

81. For the Bangkok Summit Declaration of 1995 issued at the end of the 5th ASEAN Summit, visit ASEAN home page at <<http://www.aseansec.org/summit/5th/summit5.htm>>.

- urged all concerned to remain faithful to the letter and spirit of the Manila Declaration on the South China Sea issued in July 1992 and endorsed by other countries and the Non-Aligned Movement;
- called upon all parties to refrain from taking actions that destabilize the region and further threaten the peace and stability of the South China Sea;
- urged countries in the region to undertake cooperative activities which increase trust and confidence and promote stability in the area; and
- encouraged all claimants and other countries in South Asia to address the issue in various fora, including the Indonesia-sponsored Workshop Series on Managing Potential Conflicts in the South China Sea.⁸²

The South China Sea dispute has been one of the specific issues discussed at the ASEAN Ministerial meetings since 1992. For instance, the foreign ministers of member countries of ASEAN, attending the 28th AMM on July 29-30, 1995, expressed their concern over the recent events in the South China Sea. They

encouraged all parties concerned to reaffirm their commitment to the principles contained in the 1992 ASEAN Declaration on the South China Sea, which urges all claimants to resolve their differences by peaceful means and to exercise self-restraint. They also called on them to refrain from taking actions that could destabilise the region, including possibly undermining the freedom of navigation and aviation in the affected area. They also encouraged the claimants to address the issue in various bilateral and multilateral fora. In this regard, they reiterated the significant of promoting confidence-building measures (CBMs) and mutually beneficial cooperative ventures in the ongoing Informal Workshop Series on Managing Potential Conflicts in the South China Sea initiated by Indonesia.⁸³

During the first ARF meeting, the participants also exchanged their views on the general and security situation in the region, in-

82. For Statement by the ASEAN Foreign Ministers on the Recent Development in the South China Sea, March 18, 1995, visit ASEAN home page at <<http://www.aseansec.org/politics/scs95.htm>>.

83. See Joint Communique of the Twenty-eighth ASEAN Ministerial Meeting, Bandar Seri Begawan, July 29-30, 1995, available at ASEAN home page <<http://www.aseansec.org/politics/pr,,28.htm>>.

cluding the South China Sea disputes, which, along with other sensitive issues such as North Korea's nuclear programme and the fighting in Cambodia, went unmentioned in the chairman's statement issued at the end of the meeting. This was because "once specific issues were raised, 'the participants concerned would begin attacking each other,'" as explained by Izhar Ibrahim, Indonesia's director-general for political affairs.⁸⁴ The chairman's statement issued at the end of the second ARF meeting held in Brunei Darussalam, on August 1, 1995, however, did include words on the South China Sea dispute. The ministers commended bilateral and multilateral, governmental and non-governmental consultations and seminars in the Asia Pacific region including the Indonesia Workshop series on Managing Potential Conflicts in the South China Sea as a useful means of enhancing dialogue and cooperation. The ministers also expressed their concern on overlapping territorial and maritime jurisdictional claims in the region. They encouraged all claimants to reaffirm their commitment to the principles contained in relevant international laws and conventions, and the 1992 ASEAN Declaration on the South China Sea.⁸⁵ Since 1995, the South China Sea remains one of the issues discussed at the ARF meetings.

In sum, the U.S. welcomes the efforts made by the regional security dialogues mentioned above to help manage potential conflicts in the South China Sea. It is also the U.S. policy to participate actively in the multilateral security fora in the Asia-Pacific region.

VI. U.S. POLICY OF COMPREHENSIVE ENGAGEMENT WITH CHINA

The third policy adjustment is the shift from a policy of containment toward China to a policy of comprehensive engagement with China, launched by President Clinton in September 1993. The new policy seeks, *inter alia*, constructive Chinese participation in the resolution of regional conflicts to enhance global peace and security. It was recognized by the United States that China now plays

84. The South China Sea territorial disputes, along with other sensitive issues such as North Korea's nuclear programme and the fighting in Cambodia, went unmentioned in the chairman's statement at the end of the first ARF meeting, mainly because "once specific issues were raised, 'the participants concerned would begin attacking each other'". See Frank Ching, "ARF Off to a Good Start," *Far Eastern Economic Review*, August 11, 1994, p. 34.

85. For the chairman's statement issued at the end of the second ARF meeting, either visit the ASEAN home page at <<http://www/aseansec.org>> or visit home page of Australia's Foreign Affairs and Trade at <<http://www/dfat.gov.au/arf/arf2.html>>.

a key role in regional security issues, including reaching a peaceful settlement of the territorial dispute over the South China Sea and Spratly Islands. It was argued that a continuation of the policy of containment toward China would divide U.S. Asian allies and encourage China to withdraw into narrow nationalism and militarism, resulting stiffening of China's attitude on its territorial claims in the South China Sea. As a result of this policy change, the U.S. supports China's active participation in the ARF and welcomed the dialogues between China and the ASEAN over the South China Sea dispute in 1995.⁸⁶ The extent of U.S. involvement in the sovereignty and maritime jurisdictional disputes in the South China Sea has therefore been influenced by the implementation of a policy of comprehensive engagement with China since late 1993.

86. For more information about the U.S. policy of comprehensive engagement with China, see The U.S.-China Relationship: The Right Balance, Statement by Secretary Warren Christopher, Washington, D.C., March 22, 1994, *U.S. Department of State Dispatch*, Vol. 5, No. 13, March 28, 1994, pp. 176-178; America and the Asia-Pacific Future, Secretary of State Warren Christopher, address to the Asia Society, New York City, May 27, 1994, *U.S. Department of State Dispatch*, Vol.5, No. 22, May 30, 1994, pp. 348-350; U.S.-China Relations, Fact Sheet released by the Bureau of East Asian and Pacific Affairs, U.S. Department of State, June 20, 1997, available at <http://www.state.gov/www/regions/eap/fs_us_china-relations.html>.

CHAPTER IV

MAJOR OUTCOMES OF THE U.S. SOUTH CHINA SEA POLICY MAKING

INTRODUCTION

Since the issue of the most comprehensive official U.S. policy statement on the Spratly Islands and the South China Sea in May 1995, there have been seen several positive policy outcomes in the policy decision-making process of the United States. Among them, according to U.S. Assistant Secretary of State, Winston Lord, the most important one was the constructive statement made by Chinese Foreign Minister Qian Qichen at the August 1995 ARF annual meeting. The minister ensured that the stability and freedom of navigation in the South China Sea would be maintained and respected.¹ In addition, he announced that China would act in accordance with international law, including the 1982 LOSC, to resolve sovereignty and maritime jurisdictional disputes in the Spratly Islands and the South China Sea. The second important positive policy outcome, as suggested by this author, was the signing of bilateral codes of conduct by the claimants during the second half of 1995, in which several principles were laid out to help govern each of the claimant's behavior in the disputed area. It was believed that these diplomatic efforts made by the claimant countries, namely China, the Philippines, and Vietnam, were helpful in easing tensions in the South China Sea. A multilateral code of conduct for the South China Sea was also proposed by the participating countries in regional security fora such as ASEAN ministerial meeting. A third positive policy outcome was believed to be the regular discussions and exchange of views on the South China Sea issues both in Track One and Track Two multilateral security dialogue processes, such as the ASEAN, the ARF, the South China Sea Workshop, the CSCAP, and others. Finally, there had been a widespread of ratification of the 1982 LOSC by the littoral countries in the South China Sea.

1. See "Southeast Asia Regional Security Issues: Opportunities for Peace, Stability, and Prosperity," Winston Lord, Assistant Secretary of State for East Asian and Pacific Affairs, Statement before the House International Relations Committee, Asia and Pacific Subcommittee, May 30, 1996.

While the aforementioned positive policy outcomes were considered helpful in easing tensions in the Spratly Islands and the South China Sea, no substantive progress have been achieved toward a diplomatic resolution of the disputes. Tensions escalated by conflicting claims in the Spratly Islands and the South China Sea persist. Actions and reactions of the claimants taken to bolster their respective sovereignty claims, such as opening fire on foreign fishing vessels that fished in the disputed waters, expelling foreign research vessels that entered into the disputed area, or drawing baselines for the purpose of measuring territorial sea limit of the disputed islands, had continuously been reported, which made the South China Sea remain one of the major flash points in the Asia-Pacific region.

This chapter examines and assesses these policy outcomes, either positive or negative, in detail, particularly from the perspective of U.S. policy-making process that deals with the South China Sea dispute.

I. MAINTAINING REGIONAL STABILITY AND ENSURING FREEDOM OF NAVIGATION IN THE SOUTH CHINA SEA

Maintaining peace and stability as well as ensuring freedom of navigation and open sea lines of communication in the South China Sea are vital interests of the United States. During the first half of 1995, America was very concerned about the clash between China and the Philippines over ownership of Mischief Reef and the Spratly islands group. The U.S. was worried that the clash and escalating tensions might lead to arms conflict and thus adversely affect vital U.S. interests in the South China Sea. In response, the U.S. Department of State issued the most comprehensive official statement on the Spratly Islands and the South China Sea on May 10, 1995, which clarified and elaborated Washington's position on the issue, as noted in Chapter III. The statement stressed that while Washington did not take a position on conflicting claims, it was resolved to see the sea lines of communication remain open and the dispute settled peacefully. The U.S. consulted with claimants and many interest non-claimants alike. It pressed the claimants, in particular China, not to take further provocative actions to exacerbate the situation.² It warned that if military actions occurred in the

2. See U.S. Security Policy Toward East Asia and the Pacific, statement of Ambassador Winston Lord, Assistant Secretary of State, Bureau of East Asian and Pacific Affairs, June 27, 1995, before the House International Relations Committee, Asia and

South China Sea and thus interfered with freedom of navigation, the U.S. would take actions to ensure free navigation in the area continue.³

China's response to U.S. concern was positive. At his discussion with foreign ministers of the ASEAN on July 30, 1995, Chinese foreign minister Qian Qichen expounded China's stance, views, and policies on the Spratly Islands. Qian Qichen proposed, for the first time, to hold bilateral talks with concerned countries to resolve disputes in accordance with international law and the law of the sea, including the 1982 LOSC. He urged that all of the claimants should abide by those principles under international law governing state-to-state relationships and peaceful settlement of international disputes in order not to complicate or enlarge the Spratly issue. In addition, he made it clear that freedom of navigation in the South China Sea would not be disrupted as nations argued their sovereignty over the Spratly Islands. He explained, China very much valued the importance of maintaining free uses and safety of international shipping routes in the South China Sea. In China's view, maritime navigation in the area "has never been a problem and will not be one in the future." Moreover, he pointed out that the Chinese proposal to "shelve disputes and facilitate joint development" would be the most realistic and practical way to resolve the Spratly Islands.⁴ The United States welcomed the Chinese foreign minister's statement, as stated by Secretary Christopher at the second ARF meeting and the ASEAN Post Ministerial Meeting held in Brunei, August 1 and 2, 1995 respectively.⁵

II. REGIONAL SECURITY FORA ADDRESSING SOUTH CHINA SEA ISSUES

Territorial and maritime jurisdictional disputes in the South China Sea has been listed as one of the important regional security

Pacific Affairs Subcommittee, *Federal Document Clearing House Congressional Testimony*, June 27, 1995.

3. "Jolt From the Blue," *Far Eastern Economic Review*, August 3, 1995, p. 22.

4. "Dialogue between Vice Premier and Foreign Minister Qian Qichen and ASEAN," Press Release, July 31, 1995 (in Chinese) (Copy of the text on file with the author).

5. See Opening Intervention by Secretary Christopher at ASEAN Regional Forum Ministerial, Bandar Seri Begawan, Brunei, August 1, 1995, in *U.S. Department of State Dispatch*, Vol. 6, No. 32, August 7, 1995, p. 609; and Remarks by Secretary Christopher at the Seven-Plus-Seven Session of the ASEAN Post-Ministerial Conference, Bandar Seri Begawan, Brunei, August 2, 1995, in *U.S. Department of State Dispatch*, Vol. 6, No. 32, August 7, 1995, p. 611.

issues discussed in a number of security dialogue processes existing in the Asia-Pacific region. Before the issue of the May 10, 1995 statement, China and ASEAN held their first senior officials meeting (SOM), which discussed a wide range of international and regional issues, including the South China Sea issue in Hangzhou, China in early April 1995. Dato Paduka Lim Jock Seng, chairman of that meeting, stated on behalf of the organization that "ASEAN reiterated its serious concerns that unresolved disputes in the South China Sea could destabilize the region, and urged China to take part in cooperative activities aimed at building confidence and stability in the disputed area."⁶ At the 28th ASEAN Ministerial Meeting, held in Brunei from July 29 to 30, 1995, the South China Sea dispute was one of important regional issues discussed by the participating foreign ministers. In the joint communique, issued at the end of the meeting, the foreign ministers,

expressed their concern over recent events in the South China Sea. They encouraged all parties concerned to reaffirm their commitment to the principles contained in the 1992 ASEAN Declaration on the South China Sea, which urges all claimants to resolve their differences by peaceful means and to exercise self-restraint. They also called on them to refrain from taking actions that could destabilize the region, including possibly undermining the freedom of navigation and aviation in the affected area. They also encouraged the claimants to address the issue in various bilateral and multilateral fora. In this regard, they reiterated the significance of promoting confidence-building measures (CBMs) and mutually beneficial cooperative ventures in the ongoing Informal Workshop Series on Managing Potential Conflicts in the South China Sea initiated by Indonesia.⁷

During the second ARF annual meeting, held in Brunei on August 1, 1995, participants also discussed the South China Sea issue at its closed session. The ARF participants agreed that ARF should evolve through three stages: the promotion of CBMs during the first stage; the development of preventive diplomacy during the second stage; and the elaboration of approaches to conflict resolution

6. "First ASEAN-China SOM Meeting in Hangzhou," in *UPDATE*, May 1995, p. 1.

7. For the joint communique, visit ASEAN's home page at <<http://www.aseansec.org/politics/pramm28.htm>>.

during the third stage. It was hoped that the three-stage development procedure would help ensure that the ARF assumes gradually a more substantive role in promoting regional security consultation and cooperation. At the end of the meeting, the chairman's statement was issued, in which it was stated that the ministers "expressed concern on overlapping sovereignty claims in the region. They encouraged all claimants to reaffirm their commitments to the principles contained in relevant international law and convention, and the ASEAN's 1992 Declaration on the South China Sea."⁸

During the fifth ASEAN Summit, held in Bangkok, Thailand in December 1995, the heads of state and government of ASEAN agreed that they "shall seek an early, peaceful resolution of the South China Sea dispute and shall continue to explore ways and means to prevent conflict and enhance cooperation in the South China Sea consistent with the provisions of the TAC [the Treaty of Amity and Cooperation in Southeast Asia] and the ASEAN Declaration on the South China sea of 1992, as well as international law including the United Nations Convention on the Law of the Sea."⁹ The same issue was also discussed at the first informal ASEAN heads of government meeting held in Jakarta, Indonesia on November 30, 1996, in which the ASEAN heads of government reaffirmed their commitment expressed in Bangkok Summit Declaration of 1995.¹⁰

III. THE DEVELOPMENT OF BILATERAL AND MULTILATERAL CODE OF CONDUCT IN THE SOUTH CHINA SEA

The third positive development in the South China Sea area since the issue of May 10, 1995 statement by the State Department was a proposal for establishing a regional code of conduct for the South China Sea and the conclusion of a bilateral code of conduct between the claimant countries.

At the second ARF annual meeting, held in Brunei in August 1995, the Philippines proposed to adopt a multilateral code of conduct for the South China Sea to help reduce uncertainty and suspi-

8. For the statement, visit the home page of Australia's Foreign Affairs and Trade at <<http://www.dfat.gov.au/arf/arf2.html>>.

9. For the Bangkok Summit Declaration of 1995, visit ASEAN's home page at <<http://www.aseansec.org/summit/5th/summit5.htm>>.

10. See Press Statement, The First Informal ASEAN Heads of Government Meeting, Jakarta, November 30, 1996, for the statement, visit ASEAN's home page at <<http://www.aseansec.org/summit/prias96.htm>>.

cion between and among the claimants in the Spratlys/South China Sea area. Domingo L. Siazon, the secretary of foreign affairs of the Philippines, proposed that “pending a final resolution of the fundamental question of sovereignty in the South China Sea, all concerned countries should strive to arrive at an informal arrangement, a *modus vivendi*, a code of conduct, which would give all of us clearer idea of what to expect from one another in terms of our behavior in the area.”¹¹ The idea of formulating a regional code of conduct for the South China Sea was endorsed by the foreign ministers who attended the 29th ASEAN Ministerial Meeting in July 1996.¹² The issue of developing a code of conduct in the South China Sea was also discussed at the Second Meeting of the Technical Working Group on Legal Matters held in Chiang Mai, Thailand May 13-17, 1997. The participants noted that the issue of developing the code had been discussed in other fora, formal and informal. They agreed that the conclusion of codes of conduct would be an important CBM in the South China Sea, and therefore supported the effort to establish such a code of conduct.¹³

In addition to the proposal calling for the conclusion of a multilateral regional code of conduct, there were two bilateral codes of conduct signed by the claimant countries in the South China Sea to help govern their activities conducted in the disputed areas. In August 1995, the Philippines and China issued a joint statement, in which Manila and Beijing agreed to a number of principles for a code of conduct in the South China Sea (see Appendix A). This was followed by another similar code of conduct agreed to by the Philippines and Vietnam in November 1995 (see Appendix B). The Philippines and China agreed to abide by the following principles:

- Territorial disputes between the two sides should not affect the normal development of their relations. Disputes shall be settled in a peaceful and friendly manner through consultations on the basis of equality and mutual respect;

11. “Philippines Raises Regional Security Concerns in ARF,” Department of Foreign Affairs, the Philippines, *DFA News Release*, No. BSB 23, August 1, 1995.

12. See paragraph 11 of the Joint Communiqué of the Twenty-Ninth ASEAN Ministerial Meeting, Jakarta, July 20-21, 1996, for the document, visit ASEAN’s home page at <<http://www.aseansec.org/politics/pramm29.htm>>.

13. See paragraph 12 of the Statement of the Second Meeting of the Technical Working Group on Legal Matters, Chiang Mai, May 13-17, 1997. (Copy of the statement on file with the author).

- Efforts must be undertaken to build confidence and trust between the two parties, to enhance an atmosphere of peace and stability in the region, and to refrain from using force or threat of force to resolve disputes;
- In the spirit of expanding common and narrowing differences, a gradual and progressive process of cooperation shall be adopted with a view to eventually negotiating a settlement of the bilateral disputes;
- The two sides agree to settle their bilateral disputes in accordance with the recognized principles of international law, including the UN convention on the Law of the Sea;
- Both sides shall keep an open-minded attitude on the constructive initiatives and proposals of regional states to pursue multilateral cooperation in the South China Sea at the appropriate time;
- The two sides agree to promote cooperation in fields such as protection of the marine environment, safety of navigation, prevention of piracy, marine scientific research, disaster mitigation and control, search and rescue operations, meteorology, and marine pollution control. They also agree that on some of the above-mentioned issues, multilateral cooperation could be eventually be conducted;
- All parties concerned shall cooperate in the protection and conservation of the marine resources of the South China Sea; and
- Disputes shall be settled by the countries directly concerned without prejudice to the freedom of navigation in the South China Sea.¹⁴

The code of conduct, concluded between the Philippines and Vietnam on November 7, 1995, contained the following principles:

- They shall settle disputes relating to the Spratlys through peaceful negotiations in the spirit of friendship, equality, mutual understanding and respect;
- They shall solve their disputes on the basis of respect for international law, including the 1982 United Nations Convention on the Law of the Sea;

14. A copy of the Joint Statement RP-PRC Consultation on the South China Sea and on Other Areas of Cooperation, August 9-10, 1995 is on file with the author.

- While endeavoring to promote negotiations for a fundamental and long-term solution to the Spratly dispute, they shall exercise self-restraint, refrain from using force or threat of force, and desist from any act that would affect the friendship between the two countries and the stability in the region;
- They shall promote suitable forms of bilateral and multilateral cooperation in the fields of marine environment protection, safety of navigation, marine scientific research, meteorological data, disaster mitigation and control, search and rescue operations, prevention of piracy, and maritime pollution control;
- They shall cooperate in the protection and conservation of marine living resources in the Spratlys in accordance with the relevant provisions of the 1982 UN Convention on the Law of the Sea;
- They affirm that shipping and air traffic in the area should be respected, in conformity with the principles and practice of international law;
- They shall continue dialogue and consultations on these principles, including ways of building confidence and trust between them, pending resolution of the disputes. They shall promote such dialogue, consultations and confidence-building measures on a multilateral as well as bilateral basis;
- They support a gradual and progressive process, based on certain targets and benchmarks, aimed at close cooperation in the Spratlys area and the eventual settlement of the dispute. Such cooperation shall not prejudice existing sovereignty claims; and
- Other parties are encouraged to subscribe to the principles herein stated.¹⁵

IV. APPLICATION AND RATIFICATION OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

The 1982 LOSC entered into force on November 16, 1994. As of April 5, 1995, 74 countries or entities had either ratified or ac-

15. A copy of the Joint Statement on the Fourth Annual Bilateral Consultations between the Socialist Republic of Vietnam and the Republic of the Philippines, Hanoi, November 7, 1995 is on file with the author.

ceded to this convention.¹⁶ Among the littoral countries of the South China Sea, the Philippines first ratified the convention on May 8, 1984, followed by Indonesia on February 3, 1986, Vietnam on July 25, 1994, and Singapore on November 17, 1994.¹⁷ As of April 5, 1995, the Philippines and Vietnam were the two claimants to the Spratly Islands that had become contacting parties to the 1982 LOSC. Brunei, China, and Malaysia had not yet ratified the convention. Taiwan was unable to ratify or accede to the 1982 LOSC because of its unique political status.

As stressed in the May 10, 1995 statement, the United States would view with serious concern any maritime claim, or restriction on maritime activity, in the South China Sea that was not consistent with international law, including the 1982 LOSC. The convention had also been mentioned repeatedly by regional fora, such as the ASEAN Summit, ASEAN Ministerial Meeting, and the ASEAN Regional Forum, as one of the most important legal documents that should be used as basis for peaceful settlement of the South China Sea dispute. For instance, paragraph 7 of the Bangkok ASEAN Summit Declaration of 1995 stated that "AEAN shall seek early, peaceful resolution of the South China Sea dispute . . . and enhance cooperation in the South China Sea consistent with . . . international law including the United Nations Convention on the Law of the Sea."¹⁸ While the second ARF meeting encouraged all territorial claimants in the South China Sea to reaffirm their commitment to the principles contained in relevant international laws and convention,¹⁹ the Chairman's Statement of the Third ARF meeting, held in Jakarta, Indonesia on July 23, 1996, stated clearly that "the Meeting welcomed the efforts by countries concerned to seek solutions by peaceful means in accordance with international in general and *with the United Nations Convention on the Law of the Sea in particular*."²⁰ [emphasis added]

16. For the status of the 1982 LOSC as of April 5, 1995, see *Law of the Sea Bulletin*, No. 27, 1995, pp. 10-29.

17. *Ibid.*

18. For Bangkok Summit Declaration of 1995, visit ASEAN's home page at <<http://www.aseansec.org/summit/5th/summit5.htm>>.

19. See paragraph 11 of Chairman's Statement, The Second ASEAN Regional Forum, Brunei Darulsalam, August 1, 1995. For the statement, visit home page of Australia's Department of Foreign Affairs and Trade at <<http://www.dfat.gov.au/arf/arf2.html>>.

20. For Chairman's Statement, visit home page of Australia's Department of Foreign Affairs and Trade at <<http://www.dfat.gov.au/arf/arf3.html>>.

Those who participated in the Technical Working Group Meetings on Legal Matters in the South China Sea also agreed that international law including the 1982 LOSC could help facilitate cooperation as well as CBMs in the South China Sea. The participants to the first meeting of this technical working group agreed in July 1995 that the 1982 LOSC provides a suitable framework and foundation for developing cooperation in the South China Sea, and therefore urged signatories which are not yet State-Parties to the convention to review their position with a view to becoming State Parties.²¹

In August 1995, China, a non-contacting party, and the Philippines, a contracting party, to the 1982 LOSC agreed to settle their bilateral disputes in the Spratly area with the recognized principles of international law, including the 1982 LOSC.²² Likewise, in November 1995, Vietnam and the Philippines, the two contracting parties to the convention, agreed to solve their disputes on the basis of respect for international law, including the 1982 LOSC.²³

Indeed, since the issue of the May 10, 1995 statement, there had been seen a positive development in the South China Sea regarding the application of the 1982 LOSC to help settle territorial and maritime jurisdictional disputes. In addition, in 1996 the three claimant countries to ownership of the Spratly Islands, China, Malaysia, and Brunei, ratified the 1982 LOSC. China ratified the convention on June 7, 1996, followed by Malaysia October 14 and Brunei November 5.²⁴ Since all but Taiwan of the claimants to the Spratly Islands had ratified the 1982 LOSC, it becomes necessary for them to harmonize their domestic ocean laws with the relevant provisions provided in the convention. In addition, legally speaking, they are bound by the treaty obligation to settle their sovereignty and maritime jurisdictional disputes in the South China Sea in accordance with the relevant provisions.

All of the aforementioned positive policy outcomes helped regulate external behavior of both the claimant and non-claimant

21. See paragraph 10 of Statement of the First Technical Working Group Meeting on Legal Matters in the South China Sea. Phuket, Thailand, July 2-5, 1995, in *Compilation of Meeting Statements from the Informal Working Groups on Managing Potential Conflicts in the South China Sea*, 10th Workshop on Managing Potential Conflicts in the South China Sea, Bogor, Indonesia, December 6-7, 1999, p. 51.

22. See *supra* note 14.

23. See *supra* note 15.

24. These dates are the dates when the instruments of ratification were sent to the Secretary-General of the United Nations in accordance with Article 306 of the 1982 LOSC.

countries in the Spratly Islands and the South China Sea area. Nevertheless, there had also been negative policy developments or policy outcomes since the issuance of the May 10, 1995 statement by the U.S. Department of State. First was the impact of the so-called "excessive maritime claims" on U.S. interest in ensuring stability and freedom of navigation in the South China Sea. Second was the continuation of unilateral actions and counter-actions taken by the concerned countries to bolster or defend their respective sovereignty and maritime jurisdictional claims in the disputed area. As a result, tensions in the Spratly Islands and the South China Sea persist. No one could guarantee that the existing disputes would not escalate into serious conflicts that disrupt the peace and stability in the region. Another negative policy outcome was the pending situation of U.S. accession to the 1982 LOSC, which was believed to have reduced Washington's credibility in urging the claimant countries to settle their disputes, particularly in accordance with the provisions under the 1982 LOSC.

V. MARITIME LEGISLATION AND EXCESSIVE MARITIME CLAIMS IN THE SOUTH CHINA SEA

On May 15, 1996, the Standing Committee of the Eighth National People's Congress of the People's Republic of China at its nineteenth session decided to ratify the 1982 LOSC, and at the same time declared:

1. In accordance with the provisions of the United Nations Convention on the Law of the Sea, the People's Republic of China shall enjoy sovereign rights and jurisdiction over an exclusive economic zone of 200 nautical miles and the continental shelf;
2. The People's Republic of China will effect, through consultations, the delimitation of boundary of the maritime jurisdiction with the states with coasts opposite or adjacent to China respectively on the basis of international law and in accordance with the equitable principle;
3. The People's Republic of China reaffirms its sovereignty over all its archipelagoes and islands listed in Article 2 of the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone which was promulgated on 25 February 1992;
4. The People's Republic of China reaffirms that the provisions of the United Nations Convention on the Law

of the Sea concerning innocent passage through the territorial sea shall not prejudice the right of a coastal state to request, in accordance with its laws and regulations, a foreign state to obtain advance approval from or give prior notification to the coastal state for the passage of its warships through the territorial sea of the coastal state.²⁵

On the same day China decided to ratify the 1982 LOSC, it promulgated the exact location of straight baselines and the outer limit of part of its territorial sea adjacent to the mainland and those of the territorial sea adjacent to the Paracel Islands in the South China Sea.²⁶ The Declaration also stated that the remaining baselines of the territorial sea of China will be announced at a future date.²⁷ Two days later, the Philippines issued a statement, which, *inter alia*, stated that the Philippines was gravely concerned over the Chinese baselines declaration. The Philippine government commented that

China's actions in a disputed part of the South China Sea disturbs the stability of the area, sets back the spirit of co-operation that has been slowly developing in the South China Sea and does not help in the resolution of the disputes there. The Philippines calls upon China to confer with other parties to the disputes in South China Sea with view to settling their differences in a friendly manner on the basis of equality and mutual respect.²⁸

Later on, Vietnam registered its objections to China's declaration on the baselines, which was communicated by the Permanent Mission of Vietnam to the United Nations in *note verbal* dated June 6, 1996.²⁹ Vietnam reaffirmed its sovereignty over the Hoang Sa (the Paracel Islands) and the Truong Sa (the Spratly Islands). Viet-

25. The Chinese text of the document is kept on file with the author.

26. For the Declaration of the Government of the People's Republic of China on the Baselines of the Territorial Sea, May 15, 1996, see *Law of the Sea Bulletin*, No. 32, 1996, pp. 37-40.

27. *Ibid.*, p. 40.

28. For the Statement of the Department of Foreign Affairs of the Philippines on the Ratification by China of the United Nations Convention on the Law of the Sea, see *Law of the Sea Bulletin*, No. 32, 1996, p. 88.

29. For Vietnam's Objections to the statement of 15 May 1996 made by the Government of the People's Republic of China on the baselines from which the breadth of China's territorial sea is measured, *ibid.*, p. 91.

nam claimed that China's act ran counter to international law, and therefore, "is absolutely null and void."³⁰

The two maritime claims contained in the Chinese declaration, namely, foreign warships, when exercising the right of innocent passage, must obtain advance approval from or give prior notification to the Chinese authority in order to pass through China's territorial sea, and the application of the method of straight baselines in delimiting the boundary of the Chinese territorial sea adjacent to mainland China and to the claimed Paracel Islands in the South China Sea, could be challenged as an "excessive maritime claim"³¹ and inconsistent with the 1982 LOSC. In the May 10, 1995 statement, as we recall, the United States clarified and elaborated its position on the Spratly Islands and the South China Sea, stressing that "[m]aintaining freedom of navigation is a fundamental interests of the United States. Unhindered navigation by all ships and aircraft in the South China Sea is essential for the peace and prosperity of the entire Asia-Pacific region, including the United States. . . . The United States would, . . . view with serious concern any maritime claim, or restriction on maritime activity, in the South China Sea that was not consistent with international law, including the 1982 LOSC United Nations Convention on the Law of the Sea."³² China's claim to prior permission for warships to enter its territorial sea had been protested by the United States for years.³³ As stated by U.S. Deputy Assistant Secretary for Oceans David A. Colson in September 1995, there is no basis in the 1982 LOSC for the requirement by coastal states requesting foreign warships to obtain permission, or to give notification, prior to engaging

30. *Ibid.*

31. The term "excessive maritime claims," as defined by J. Ashley Roach and Robert Smith, mean "[c]laims by coastal States to sovereignty, sovereign rights or jurisdiction over ocean areas that are inconsistent with the terms of the LOS Convention."

32. See Spratlys and the South China Sea, Statement by Christine Shelly, Acting Spokesman, May 10, 1995. The statement can be found in U.S. Interest in Southeast Asia, *Hearing* before the Subcommittees on International Economic Policy and Trade and Asia and the Pacific of the Committee on International Relations, House of Representatives, 104th Congress, 2nd Session, May 30 and June 19, 1996 (Washington, D.C.: GPO, 1997), p. 157.

33. See William S. Cohen, Secretary of Defense, *Annual Report to the President and the Congress*, appendix (Freedom of Navigation). For the report, visit Defense Link, the official web site of the U.S. Department of Defense at <<http://www/ditc.mil/execsec/adr98/apdxi.html>>.

in innocent passage through the territorial sea. This requirement is inconsistent with the negotiating record during the UNCLOS III.³⁴

As far as China's claim to the application of the method of straight baselines is concerned, it has been argued that the claim is not consistent with the provisions of the 1982 LOSC, and therefore, an "excessive maritime claim".³⁵ Vietnam objected to the announcement vehemently on June 6, 1996, asserting that the establishment of the territorial baselines of Paracel Islands by China constituted a serious violation of Vietnamese sovereignty over the said islands, that China violated the 1982 LOSC by giving the Paracel Islands the status of an archipelagic state to illegally annex a vast sea area into the internal waters of the Paracel Islands, and that China failed to comply with the provisions of the 1982 LOSC. Particularly Article 7 (Straight Baselines) and Article 38 (Right of Transit Passage), when it drew the straight baseline at the segment east of the Leizhou Peninsula from point 31 to 32.³⁶

About two months after the announcement of the baselines by China, the U.S. Department of State published *Limits In the Seas*, No. 117 (Straight Baselines Claim: China), prepared by Robert Smith. The study was divided into two parts: (1) analysis of the baselines of the territorial sea adjacent to the mainland and (2) analysis of the baselines of the territorial sea adjacent to the Paracel Islands. Smith argued that "the length and location of many of China's straight baseline segments (in the eastern coastal area) are such that they do not meet the criteria set forth in the LOS Convention."³⁷ As far as the Paracel Islands are concerned, Smith argued, "[r]egardless of whose sovereignty the Paracel Islands comes under, straight baselines cannot be drawn," since the LOSC "is quite clear in stating that an archipelagic State 'means a State constituted wholly by one or more archipelagos and may include other islands.'"³⁸ In September 1996, the U.S. official reaction to the Chi-

34. "The Law of the Sea: Avenue to Cooperation," address by Ambassador David A. Colson, Deputy Assistant Secretary for Oceans, U.S. Department of State, presented to the Maritime Law Association of the Philippines, September 19, 1995. For the speech, visit home page of Bureau of Oceans and International Environmental and Scientific Affairs at <<http://www.state.gov/www/global/oes/oceans/index.html>>.

35. Daniel J. Dzurek, "The People's Republic of China Straight Baseline Claim," *IBRU Boundary and Security Bulletin*, winter 1996, pp 77-89.

36. See *supra* note 29.

37. Bureau of Oceans and International Environmental and Scientific Affairs, United States Department of State, *Limits in the Seas: Straight Baseline Claim: China*, No. 117, July 1996, pp. 11-14.

38. *Ibid.*, p. 8.

nese baseline declaration appeared in the *International Herald Tribune*, which reported that "the United States has implicitly warned Beijing that it will not respect a formal Chinese declaration that would restrict freedom of movement by American warships and military aircraft in Asian waters."³⁹ The report also noted that the United States considered the Chinese act as contrary to international law. The view was communicated to the Chinese government through diplomatic channels.⁴⁰

VI. PENDING U.S. ACCESSION TO THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

The year 1996 was an important year for the 1982 LOSC receiving nearly universal acceptance from the countries in the South China Sea area, the Asia-Pacific region, and the world. Twenty-seven countries⁴¹ of the world and ten countries⁴² in the Asia-Pacific region had either ratified or acceded to the 1982 LOSC in 1996. By the end of 1996, all of the seven member countries of ASEAN had ratified the 1982 LOSC with the exception of Thailand. Most of the members of the ARF, the CSCAP, and the participating countries in the South China Sea Workshop had also become contracting parties to the 1982 LOSC before the end of 1996. However, there can be found discrepancies between domestic laws and maritime claims of these countries and the 1982 LOSC. Examples of these "excessive maritime claims" include claims of South Korea (right of innocent passage for warships), China (straight baselines drawing and right of innocent passage for warships), the Philippines (historic waters and archipelagic waters), Vietnam (straight baselines drawing and right of innocent passage), Indonesia (right of transit passage through straits which are used

39. "U.S. Warns China on Sea Expansion," *International Herald Tribune*, September 19, 1996.

40. *Ibid.*

41. Nauru, S. Korea, Monaco, Georgia, France, Saudi Arabia, Slovakia, Bulgaria, Myanmar, China, Algeria, Japan, Ireland, Finland, Czech Republic, Norway, Sweden, Netherlands, Panama, Mauritania, New Zealand, Haiti, Mongolia, Palau, Malaysia, Brunei and Romania, in order of the dates submitting the instruments of ratification or accession to the UN Secretary-General. See Chronological list of ratifications, accessions and successions to the Convention and their regional groups, as of March 31, 1997, in *Law of the Sea Bulletin*, No. 33, 1997, pp. 1-5.

42. Nauru, S. Korea, Myanmar, China, Japan, New Zealand, Mongolia, Palau, Malaysia, and Brunei, *ibid.*

for international navigation) and Thailand (historic bay).⁴³ As a result, it became necessary for these countries to harmonize their respective domestic ocean laws and regulations with the relevant provisions of the 1982 LOSC.

In the past, the United States had responded to some of the claims mentioned above through the Freedom of Navigation (FON) Program, which was formally instituted during the Carter Administration in 1979 for the purpose of preserving and enhancing the rights and freedoms of the United States in navigation, overflight and other related high seas uses. The program was continued by the Reagan, Bush and Clinton administrations.⁴⁴ When remonstrations and protestations are unavailing, U.S. warships or fighter jets may be sent to sail into or fly over disputed regions, such as the Gulf of Sidra⁴⁵ and the Black Sea,⁴⁶ for purpose of demonstrating their rights and determination to do so.

Captain George Galdorisi of U.S. Navy urged repeatedly and strongly that the United States should accede to the 1982 LOSC as soon as possible to regain its maritime leadership. One of the ten reasons suggested by Galdorisi for U.S. accession to the convention was the growing political, economic, and military costs of U.S. Freedom of Navigation Program. "At a time when forces available to conduct FON missions are dwindling," Galdorisi elaborated, "the United States is dealing with an increasingly diverse number of claims by coastal and island states to sovereignty and jurisdiction over the ocean areas that are inconsistent with the terms of the 1982

43. For discussion of these excessive maritime claims, see J. Ashley Roach and Robert W. Smith, *United States Responses to Excessive Maritime Claims*, second edition (The Hague/Boston/London: Martinus Nijhoff Publishers, 1996).

44. For more information about the FON program, see William J. Aceves, "The Freedom of Navigation Program: A Study of Relationship between Law and Politics," *Hasting International and Comparative Law Review*, Vol. 19, Winter 1996, pp. 277-281.

45. In 1987, U.S. Warships and fighter planes were sent to the disputed waters in the Gulf of Sidra to protest Libya's claim that the bay was its historic bay. See "Navigation Rights and the Gulf of Sidra," *Department of State Bulletin*, Vol. 87, No. 2119, February 1987, pp. 69-70.

46. In February 1988, two U.S. Navy ships sailed through the Black Sea within nine miles of the Crimean coast in a test of what constituted Soviet territorial waters. It ended up with an incident in which two small Soviet warships bumped the two U.S. Navy ships. See "Soviets Bump U.S. Ships in Black Sea," *The Washington Post*, February 13, 1988, p. 23; "Soviets Protest Collision Of Warships in Black Sea," *The Washington Post*, February 14, 1988, p. 46.

Law of the Sea Convention.”⁴⁷ These “excessive maritime claims” include, but are not limited to:

- unrecognized historic waters claims;
- improperly drawn baselines for measuring claims;
- territorial sea claims greater than 12 miles;
- security zones which are not defined in the convention;
- contiguous zones are variance with the convention provisions;
- exclusive economic zones where the coastal state purports to negate navigation and overflight rights;
- archipelagic claims not conforming to the rules of the convention;
- other categories of excessive claims including restriction on territorial sea innocent passage, requirements for advance notice of innocent passage, and restrictions to transit passage.⁴⁸

Galdorisi pointed out that “[m]any of the nations making claims that the United States considers excessive assert that the convention is legal contract, the rights and benefits of which are not necessarily available to non-parties.”⁴⁹ He also argued it had become more and more difficult for U.S. to use customary international law to counter foreign countries’ excessive maritime claims and to sustain U.S. rights regarding the use of the oceans.⁵⁰ In a paper entitled “Law of the Sea: The End Game,” published by the National Intelligence Council in March 1996, the author argued that actions such as sending U.S. warships or fighters to the disputed regions for the purpose of challenging foreign countries’ excessive maritime claims and asserting U.S. navigation and overflight rights can have the following drawbacks:

- Most of the coastal states that control international straits and passages are on friendly terms with the United States and would rather use the LOS Convention’s dispute settlement provisions than confront a physical challenge;
- In some instance, the cost, disadvantages, or risks of physically challenging excessive claims of jurisdiction

47. George Galdorisi, “The United States and the Law of the Sea: A Window of Opportunity for Maritime Leadership,” *Ocean Development and International Law*. Vol. 26, 1995, p. 79.

48. *Ibid.*

49. *Ibid.*, p. 80.

50. *Ibid.*

might be deemed higher than the benefits would warrant.⁵¹

As noted earlier, President Clinton transmitted the 1982 LOSC and the 1994 Agreement to the United States Senate for its advice and consent to accession and ratification, respectively, on October 7, 1994. He also transmitted for the information of the Senate the report of the Department of State with respect to the 1982 LOSC and the 1994 Agreement, as well as Resolution II of Annex I and Annex II of the Final Act of the UNCLOS III. President Clinton stated in the letter, in part:

The United States has basic and enduring national interests in the oceans and has consistently taken the view that the full range of these interests is best protected through a widely accepted international framework governing uses of the sea. Since the late 1960s, the basic U.S. strategy has been to conclude a comprehensive treaty on the law of the sea that will be respected by all countries. Each succeeding U.S. Administration has recognized this as the cornerstone of U.S. oceans policy. Following adoption of the Convention in 1982, it has been the policy of the United States to act in a manner consistent with its provisions relating to traditional uses of the oceans and to encourage other countries to do so likewise.⁵²

In the letter submitted by the Secretary of State to the President on September 23, 1994, Warren Christopher wrote that "[t]he interested Federal agencies and departments of the United States have unanimously concluded that [the U.S.] interests would be best served by the United States becoming a Party to the Convention and the Agreement."⁵³

Some of the members of the U.S. Congress, however, had differing news regarding U.S. accession to the 1982 LOSC. On July 19, 1994, Senator Judd Gregg and Congressman Jack Fields submitted concurrent resolutions expressing the sense of the U.S. Congress that the United States should not sign the United Nations Law of the Sea Treaty. The preamble of the Senate Concurrent Resolution

51. National Intelligence Council, *Law of the Sea: The End Game*, paper published in March 1996, p. 12.

52. For the Letter of Transmittal, See *Law of the Sea Convention: Letters of Transmittal and Submittal and Commentary*, U.S. Department of State Dispatch Supplement Vol. 6, Supplement No. 1, February 1995, p. 1.

53. For the Submittal Letter, *ibid.*, pp. 2-4.

72 stated, in part, that the 1982 LOSC, even as amended, "continues to discriminate against the United States and the industrialized allies of the United States, is antithetical to business interests and will discourage United States investment in seabed mining."⁵⁴ In a hearing on the status of the 1982 LOSC, held before the Committee on Foreign Relations, U.S. Senate, on August 11, 1994, Jack Fields, U.S. Representative from Texas, testified before the committee, where he outlined 14 reasons to explain why the 1982 LOSC is fundamentally flawed. In his view, the "Law of the Sea Treaty" (LOST) would gravely undermine the free enterprise system and would harm U.S. economy and security interests.⁵⁵

The November 1994 congressional elections displaced the Democratic Party's majority in U.S. Congress. As a result of the Republican Party's victory, Senator Jesse Helms was placed in the chair of the powerful Senate Committee on Foreign Relations in early 1995. It was believed that the new chairman's position on foreign affairs in general and international treaties in particular made it very difficult or unlikely for the Senate Foreign Relations Committee to schedule hearings for the 1982 LOSC and the 1994 Agreement. As reported, Senator Helms "dislikes foreign aid and considers it little more than hard-earned U.S. tax dollars being flushed 'down foreign ratholes'."⁵⁶ In addition, he "hates most international treaties and calls the United Nations 'that longtime nemesis of millions of Americans.'"⁵⁷ As a result, "[a] series of treaties that must pass through Helms' committee before they can be enacted are imperiled. A treaty on chemical weapons and United Nations convention on biodiversity, the law of the sea . . . could be sidelined."⁵⁸ No matter how hard Senator Claiborne Pell, the former chairman of the Foreign Relations Committee, worked in the Senate to highlight the importance of U.S. accession to the 1982 LOSC to the country's security, economic, fisheries and other interests, the new chairman did not schedule hearings for the 1982

54. S.Con.Res. 72, Expressing the sense of the Congress that the President should refrain from signing the seabed mining agreement relation to the Convention on the Law of the Sea, See Congressional Record - Senate, July 19, 1994, pp. S9252-9253.

55. See the prepared statement of Representative Fields, in Current Status of the Convention on the Law of the Sea, *Hearing* before the Committee on Foreign Relations, United States Senate, 103rd Congress, 2nd session, August 11, 1994 (Washington, D.C.: GPO, 1994), pp. 3-5.

56. "The GOP Majority in congress Will Challenge Clinton on a Host of Foreign Policy Fronts," *U.S. News & World Report*, Vol. 117, No. 21, November 28, 1994.

57. *Ibid.*

58. *Ibid.*

LOSC and the 1994 Agreement.⁵⁹ In summer 1995, in an effort to spur Senate consideration of the 1982 LOSC, a consortium of executive department agencies presented strong arguments for U.S. accession to the convention at a two day symposium, held in Washington, D.C.⁶⁰ The participants from Departments of State, Defense, and Commerce, and former U.S. Special Representatives such as Ambassadors Elliot Richardson and John Norton Moore gave their strong support for U.S. accession to the 1982 LOSC and asked for favorable and early Senate action on the convention.⁶¹

In January 1996, the U.S. Department of Defense issued the second edition of the position paper regarding U.S. accession to the 1982 LOSC.⁶² The paper analyzed the Department of Defense's interests in having the United States become a contracting party to the 1982 LOSC, as modified by the 1994 Agreement. The principal judgment of the Department of Defense was that U.S. national security and public order at sea are best maintained by a universally accepted 1982 LOSC. The Department also argued that the U.S. reliance upon customary international law rather than the revised Convention would serve the country's interests much less effectively, and could result in the United States placing its armed forces in harm's way because these customary principles of law are not universally understood or accepted. The Department was of the opinion that the 1982 LOSC would be "the best way to reduce the likelihood of situation in which U.S. forces must be used to assert navigational freedoms, as well as the best method of fostering the use of various conflict avoidance schemes which are contained in

59. See Arrival of the Convention on the Law of the Sea, Congressional Record — Senate, October 6, 1994, Vol. 140, No. 144, pp. S14467-S14475; Ratification of the Law of the Sea Convention Is Needed to Protect the Fishery Interests of the United States, Congressional Record — Senate, March 14, 1995, Vol. 141, No. 47, pp. S3862- S3867; U.S. Ratification of the Law of the Sea Convention Will Enhance Our National Interests in Congressional Record — Senate, July 27, 1995, pp. S9195- S9198; and Ratification of the Law of the Sea Convention Will Promote the Economic Interests of the United States, Congressional Record — Senate, May 16, 1995, Vol. 141, p. S6712.

60. George Galdorisi, "Progress toward Senate Consideration of the 1982 United Nations Law of the Sea Convention," *L.S.I Professional Newsletter* #39, Vol. 6, No. 7, October 1995, pp. 2-3.

61. *Ibid.*, p. 3.

62. The paper, entitled "National Security and the Convention on the Law of the Sea," was first published in July 1994. The second edition, entitled "National Security and Law of the Sea," was published in January 1996. For the second edition of the position paper, visit Council of Ocean Law's home page at <<http://www.oceanlaw.org/jcs-exsum.html>>.

the convention.”⁶³ Two of the key conclusions given in the paper are:

- Access to the oceans through the world, including areas off foreign coasts at great distances from the United States, is vital to U.S. security and economic interests in global navigation, overflight and telecommunications. These interests are best served by a globally accepted public order of the oceans that minimizes the challenges to and costs of securing such access;
- By providing a comprehensive and stable legal regime for the oceans, a universally accepted Convention, as modified by the agreement, will promote [the U.S.] strategic goals of free access to and public order of the oceans and airspace above.⁶⁴

On December 4, 1995, the Agreement for the Implementation of the Provisions of the UN convention on the Law of the Sea Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the 1995 Straddling Stocks Agreement) was adopted by the UN General Assembly and opened for signature. The United States signed the agreement on December 4, 1995.⁶⁵ On June 27, 1996, the Agreement was approved by the U.S. Senate.⁶⁶ On August 21, 1996, the agreement was ratified by the United States.⁶⁷ Right before the U.S. ratification of the 1995 Fish Stocks Agreement, Senator Pell stated that “in advising and consenting to ratification of the Straddling Stocks Agreement, the Senate’s work is only partially done.” He continued, “[h]aving approved the Straddling Stocks Agreement, the next logical step for this body is to consider and pass the treaty which provides the foundation for the agreement, namely the United Nations Convention on the Law of the Sea.”⁶⁸ He argued that the U.S. becoming a party to the Straddling Stocks Agreement, but remain-

63. See Executive Summary of the position paper, *ibid.*

64. *Ibid.*

65. See Straddling Stocks Agreement, Congressional Record — Senate, December 14, 1995, p. S18589.

66. See Ratification of the Law of the Sea Convention Is an Urgent Necessity, Congressional Record — Senate, August 2, 1996, p. S9473.

67. See Status of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of the 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, available at UN home page <<http://www.un.org/Depts/los/los164st.htm>>.

68. Ratification of the Law of the Sea Convention Is an Urgent Necessity, *supra* note 66, p. S9473.

ing outside the 1982 LOSC does not best serve U.S. national interests. "Only by becoming a party to the Law of the Sea Convention can the United States maximize its potential gain from the agreement and protect its fisheries interest," he suggested.⁶⁹ In addition, he pointed out that in order to nominate a judge to the International Tribunal for the Law of the Sea, whose first election was scheduled for early August 1996, the United States must become a party to the 1982 LOSC.⁷⁰

The Senate Foreign Relations Committee kept ignoring the call. No hearings were scheduled for the 1982 LOSC and the 1994 Agreement during the 104th Congress. As of today, the U.S. has not yet acceded to the 1982 LOSC. It was believed that the attitude of U.S. Senate regarding whether giving its advice and consent depends on the answer to one of the fundamental questions, that is: Is the 1982 LOSC really "fixed"?⁷¹ The Senate is also concerned about the following issues:

- the dispute settlement process set forth in the Convention and the U.S. declarations on dispute settlement;
- the relationship between U.S. law and various parts of the Convention regarding use of the world's oceans;
- U.S. acceptance of the Convention/Agreement interpretation and application of the common heritage of mankind concept;
- The provisional application procedures as a precedent in the U.S. treaty process;
- The nature of U.S. commitments undertaken by a decision of the ISA [International Sea-Bed Authority]: what does a Council decision commit the U.S. government to do; should Congress have a role and if so, under what circumstances? and
- The cost and financing of the ISA and U.S. participation therein, now and in the future.⁷²

The credibility of the United States in dealing with maritime affairs, pursuing a favorable public order at sea, and helping manage disputes, such as those in the South China Sea, had been ques-

69. *Ibid.*

70. *Ibid.*

71. Marjorie Ann Browne, "The Law of the Sea Convention and U.S. Policy," *CRS Issue Brief for Congress*, No. 950101. For the brief, visit home page of the Committee for the National Institute for the Environment (CNIE) at <<http://www.cnie.org/nle/mar-16.html>>.

72. Marjorie Ann Browne, *ibid.*

tioned mainly because the country remains outside of the world club of the law of the sea. It is worth noting that in a report published in September 1996, explaining why the Clinton administration took a low-key and private position in reaction to China's baseline declaration, the author stated it was because the United States had not yet ratified the 1982 LOSC while China did so in June 1996.⁷³

VII. ACTIONS AND REACTIONS OF THE CLAIMANTS IN THE SOUTH CHINA SEA AREA

The third negative policy outcome found in the process of making U.S. policy toward the sovereignty and maritime jurisdictional disputes in the Spratly Islands and the South China Sea were the persisting and periodically escalating tensions in the area that resulted from actions and/or counter-actions taken by the claimant countries for the purpose of bolstering their respective sovereignty claims. The following is a summary of the major actions and/or counter-actions taken in particular by China and the Philippines during the period between August 1995 and the end of 1997.

On August 15, 1995, President Fidel Ramos of the Philippines announced that a Philippine court had found 62 Chinese nationals guilty of "malicious mischief" for illegally fishing off a reef in the disputed Spratly Islands claimed by both Beijing and Manila. The Chinese fishermen had been detained by the Philippine authority since March 1995. Ten of the 62 fishermen were sentenced to two to four months imprisonment, while the rest were sentenced to six months to two years and four months.⁷⁴ In late August 1995, it was reported that China planned to hold military exercises in the disputed Spratly Islands.⁷⁵ In March 1996, a Philippine military said that China had erected sophisticated communications equipment on its structures on a Philippine-claimed reef in the disputed Spratly Islands in the South China Sea.⁷⁶ In May 1996, it was further reported that China had reinforced its structures on Mischief Reef in part of the Spratly Islands claimed by the Philippines by building

73. "U.S. Warns China on Sea Expansion," *International Herald Tribune*, September 19, 1996.

74. "Philippines Imprisons Chinese Fishermen Caught in Spratlys," *Deutsche Presse-Agentur*, August 15, 1995.

75. "Philippines' Ramos Not Alarmed by Exercise Report," *Reuters World Service*, August 24, 1995.

76. "China Mounts Communication Equipment on Spratly Reef," *Asian Political News*, April 1, 1996.

new structures and a catwalk.⁷⁷ Also in May 1996, Malaysia conducted military exercises in the disputed Spratly Islands. It was believed that the exercise was conducted for the purpose of asserting Malaysia's sovereignty over the disputed Layang Layang (Swallow Reef) in the South China Sea.⁷⁸ In July 1996, Indonesia sent the Chinese Embassy in Jakarta an *aide memoire* seeking clarification of the Chinese territorial claims in the South China Sea.⁷⁹ ASEAN raised the same question during a dialogue between its seven member countries and China on July 29, 1996. ASEAN asked China to explain why it drew its baselines from the disputed Paracel Islands in the South China Sea, which ASEAN considered inconsistent with the 1982 LOSC.⁸⁰ In August 1996, navy patrol boats of the Philippines arrested 91 Chinese fishermen for fishing in the waters claimed by Manila.⁸¹ In December 1996, the Philippines opened a runway on one of the disputed Spratly Islands and pledged to develop the area as a tourist spot.⁸² Several days later, China responded by urging the Philippines to refrain from any act that could harm Beijing-Manila relations.⁸³ On December 30, 1996, it was reported that General Acedera of the Philippines ordered General Guillermo Ruiz, commander of the Armed Forces of the Philippines West Command, to upgrade the weapons of soldiers stationed on the disputed Spratly Islands.⁸⁴

In January 1997, it was reported that the Philippines was planning to build an aircraft refuelling facility on one of the islands of the Spratly group.⁸⁵ On March 7, 1997, China moved an oil exploration rig, *Kan Tan III*, into the disputed waters in the Gulf of Tonkin

77. "Chinese Structures on Spratly Reinforced," *Reuters World Services*, May 20, 1996.

78. "Malaysia Says It Is Not 'Saber Rattling' in Spratlys," *Japan Economic Newswire*, May 29, 1996.

79. "Beijing Questioned Over Sea Claims," *South China Morning Post*, July 22, 1996, p. 11.

80. "ASEAN Demands China Explain Baselines in S. China Sea," *Asian Political News*, July 29, 1996.

81. "Philippine authorities Arrest 91 Chinese Fishermen," *Deutsche Presse-Agentur*, August 16, 1996.

82. "Manila Opens Airstrip on Disputed Spratly Island," *Reuters North American Wire*, December 25, 1996.

83. "China Criticises Manila Airstrip on Spratlys," *Reuters North American Wire*, December 29, 1996.

84. "Philippines Military Chief Orders Troop Upgrade in the Spratlys," *BBC Summary of World Broadcasts*, December 30, 1996.

85. "Philippines to Build Aircraft Refuelling Facility on Spratly Island," *Agence France-Presse*, January 2, 1997.

close to the Paracel Islands, claimed by China, Vietnam, and Taiwan. Vietnam protested vehemently.⁸⁶ On 29 April 1997, the Philippines filed a diplomatic protest with China over the presence of three Chinese naval vessels and the discovery of a new hut-like structure in the immediate vicinity of Kota and Panata Islands (Yangxin Shazhou in Chinese), which have been occupied by Philippine troops and are part of the Philippine claim in the disputed Spratlys.⁸⁷ In early May, China removed its warships from the waters of the disputed area in the Spratlys.⁸⁸ It was also reported that China had abandoned the hut-like structure.⁸⁹ However, islands disputes between the two countries flared up again on May 13, 1997 when Beijing warned that the raising of a Philippine flag on Scarborough Shoal (Huangyan Dao in Chinese) in the South China Sea was "a serious violation" of its sovereignty. China claimed that Scarborough Shoal "belongs to its Zhongsha Islands (Macclesfield Bank) and is not at all a disputed island."⁹⁰ In response, a series of actions were taken by Manila to support its territorial claim, including: the visit of Philippine naval and congressional leaders to the disputed Scarborough Shoal on May 17-18;⁹¹ conducting almost daily naval exercises; shopping for fighter jets and ships;⁹² chasing away a Chinese vessel from the Scarborough Shoal;⁹³ seeking to drag Washington into its territorial dispute with Beijing on the South China Sea;⁹⁴ proposing to build a lighthouse on Scarborough Shoal by a Philippine legislator; blocking Chinese civilians from vis-

86. Mark J. Valencia, "Southeast Asians Wonder If China Aims for Cooperation," *International Herald Tribune*, March 28, 1997, p. 8.

87. "Philippines Protests at Chinese Warships in Spratlys," *Japan Economic Newswire*, April 29, 1997; "Manila on Alert over China's Spratly Presence," *Japan Economic Newswire*, April 30, 1997.

88. "China Removes Ships near Spratly Islands," *Chicago Tribune*, May 3, 1997, p. 12.

89. "Latest Tensions Recede in Spratly Island Dispute," *The New York Times*, May 4, 1997, p. 14.

90. "China Warns Philippines over Flag on Shoal," *Reuters North American Wire*, May 13, 1997.

91. Justin Marozzi, "Islands Row Tests Manila's Patience," *The Financial Times*, May 20, 1997, p. 8.

92. "Philippines Shops for Used Jets, Ships to Fend off China," *The Seattle Times*, May 21, 1997, p. A10.

93. "Philippines Stop the Saber-rattling," *The Florida Times-Union*, May 23, 1997, p. A18.

94. "Philippines Satisfied with Mutual Defense Pact with US," *Agence France-Presse*, May 25, 1997.

iting the disputed shoal,⁹⁵ and detaining 21 Chinese fishermen who were fishing in the waters near Sarborough Shoal.⁹⁶ At the end of May 1997, bilateral talks between the two countries were held in Beijing, aimed at avoiding further clashes in the disputed area, but made no progress in resolving the territorial dispute.⁹⁷ On June 4, 1997, China's Assistant Foreign Minister Chen Jian stated at a CSCAP meeting held in Singapore that all of the claimants to the Spratly Islands should exercise self-restraint and refrain from threats or use of force. He also asked all parties to place top emphasis on friendly bilateral relations, shelving the disputes and pursuing joint development.⁹⁸ On June 25, 1997, it was reported that Philippines troops stationed on a disputed island in the Spratlys chain fired warning shots at a Chinese fishing vessel.⁹⁹ On July 4, 1997, China urged Manila not to disrupt peace and stability in the disputed spratly Islands after the Philippines navy destroyed Chinese structures there.¹⁰⁰ In late November 1997, Vietnam protested China's decision to grant Atlantic Richfield Corp (Arco) and state-owned China National Offshore Oil Corporation (CNOOC) rights to develop a gasfield in the disputed waters which Vietnam claimed as its EEZ.¹⁰¹ In December 1997, two fishing boats with 34 Chinese fishermen aboard were arrested by the Philippine navy, charged with "illegal entry" and "illegal fishing" in the waters claimed by the Philippines.¹⁰²

All of the actions and counter-actions cited above are considered negative policy outcomes of the U.S. policy, mainly because they have the potential to disrupt peace and stability in the Spratly Islands and the South China Sea. Yet, maintaining peace and stability in the area has been the vital interest of the United States. In

95. "Fury over Outcrop Lighthouse Plan," *South China Morning Post*, May 26, 1997, p. 6.

96. "RP Reviews Charges vs. Fishermen," *Business World*, June 3, 1997, p. 8.

97. Gertrude Chavez, "Manila between a Rock and a Hard Place," *Asia Times*, June 3, 1997, p. 4.

98. "China 'Optimistic' on Peace in South China Sea," *Agence France-Presse*, June 5, 1997.

99. "Philippine Troops Fired at Chinese Fishing Vessels in Spratlys," *South China Morning Post*, June 25, 1997.

100. "China Urge Manila Not to Disrupt Peace in Spratly," *Muzi Dailynews*, July 4, 1997, available at <<http://www.latelinenews.com>>.

101. "Hanoi Protests Sino-US Oil Exploration Grant," *Muzi Dailynews*, November 24, 1997, available at <<http://www.latelinenews.com>>.

102. "Philippine Navy Detained Chinese Fishermen," *Muzi Dailynews*, December 10, 1997, available at <<http://www.latelinenews.com>>.

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Chapter V, we will see more actions and reactions taken by the claimant countries in 1998 and 1999, which created new policy challenges for the United States.

CHAPTER V

POLICY INPUTS SINCE 1998: NEW CHALLENGES FOR THE UNITED STATES

INTRODUCTION

Since 1998, several important new policy-input variables have kept entering into the U.S. policy-making process, creating new policy challenges for Washington and impacting America's policy on the Spratly Islands and the South China Sea. These new policy input variables are mainly external, including: (1) new maritime legislation and excessive maritime claims in the South China Sea; (2) the repeated emergence and development of potential triggers for conflicts in the Spratly Islands and the South China Sea; (3) the occurrence of Asian Financial crisis; (4) the signing and entrance into force of the U.S.-Philippine Visiting Forces Agreement; (5) the continuation of regional efforts to find solutions to the sovereignty and maritime jurisdictional disputes in the region; (6) the public expression of the littoral countries' attitudes toward U.S. involvement in the South China Sea territorial disputes; and (7) the CBMs agreed to by the claimant countries. Most of the listed policy-input variables created problems or challenges for the U.S. policy decision-makers. The rest of them, however, were welcomed by Washington, since they moved the management of the South China Sea territorial dispute in a direction which the United States prefers to see. Each of these variables is to be examined in detail below. It should be noted that there will be no discussion of those major internal policy-input variables in the U.S. policy-making process concerning the South China Sea territorial disputes in this chapter, as the U.S. interests or concerns in the region remained more or less intact in the two-year period 1998-1999.

I. NEW MARITIME LEGISLATION AND EXCESSIVE MARITIME CLAIMS

A. Developments of Maritime Legislation in China and Taiwan

On June 26, 1998 two years after the ratification of the 1982 LOSC and declaration of the baselines of its territorial sea, China enacted the "Law of the People's Republic of China on the Exclu-

sive Economic Zone and the Continental Shelf” (hereinafter the 1998 PRC EEZ/Continental Shelf Law).¹ The Chinese legislative action on the EEZ and the continental shelf was probably stimulated by its neighboring states’ legislative actions on the same subject. Japan promulgated its Law on the Exclusive Economic Zone and the Continental Shelf on June 14, 1996.² South Korea promulgated Exclusive Economic Zone Act No. 5151 on August 8 the same year.³ Taiwan’s Legislative Yuan⁴ was also considering adoption of its law on the EEZ and the continental shelf.

There are 16 articles contained in the 1998 PRC EEZ/Continental Shelf Law. Article 2 is perhaps the most important. This article will surely be referred to when the negotiation for delimiting the maritime boundary of EEZ and the continental shelf between China and its neighboring countries in the South China Sea such as the Philippines, Vietnam, and Indonesia begins. Article 2 establishes a 200 nautical mile EEZ, extending from the baselines from which the breadth of the territorial sea is measured. The same article delimits China’s continental shelf as the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines where the outer edge of the continental margin does not extend up to that distance. Article 2 also provides that the delimitation of the EEZ and the continental shelf between China and its opposite or adjacent states should be effected by agreement on the basis of international law and in accordance with the equitable principle. Article 14 provides that China’s historic rights will not be affected by the regulations provided in the 1998 PRC EEZ/Continental Shelf Law. The “historic rights” contained in Article 14 are referred to by one of the Chinese scholars as Beijing’s claim over the historic rights in the waters within the nine dotted lines delimited in the Chinese map of the South China Sea.⁵

1. For the Chinese text of the Law, see *People’s Daily*, June 30, 1998, p. 2; for English version, see *Law of the Sea Bulletin*, No. 38, 1998, pp. 28-31.

2. For the English text of the Law, see *Law of the Sea Bulletin*, No. 33, 1997, pp. 36-44.

3. For the English text of the Law, see *Law of the Sea bulletin*, No. 33, 1997, pp. 52-54.

4. This is the highest legislative body in the nation. The Legislative Yuan represents the people in passing legislation, examining budgetary bills and auditing reports, and supervising the operation of the Executive Yuan (The ROC cabinet).

5. The author’s correspondence with the Chinese scholar who is now a research fellow oversea.

In January, 1998, Taiwan promulgated its "Law of the Republic of China on the Territorial Sea and the Contiguous Zone" (hereinafter, the ROC Territorial Sea/Contiguous Zone Law) and the Law on the Exclusive Economic Zone and the Continental Shelf,⁶ both of which came into force on January 21, 1998.⁷ The provisions contained in the ROC Territorial Sea/Contiguous Zone Law and the EEZ/Continental Shelf Law are consistent with the 1982 LOSC, except perhaps Article 7, which requires prior notice for passage of warships.

The recent developments of maritime legislation in China and Taiwan will have important policy implications for the littoral countries in the South China Sea. On the one hand, it will increase the need for the concerned countries to take actions either to bolster their sovereignty and maritime jurisdictional claims or to prepare for the settlement of their territorial disputes at sea with neighboring countries if desirable or feasible. On the other hand, it becomes necessary for the concerned countries to delimit maritime boundaries with adjacent or opposite states in order to draw the range within which they are entitled the rights to exercise sovereignty, sovereign rights and jurisdiction and to avoid potential maritime conflicts arising from overlapping or competing claims.

B. Maritime Boundary Delimitation in the South China Sea

The territorial disputes over the Paracel Islands and the Spratly Islands in the South China Sea complicate the delimitation of maritime boundaries between China and the four member states of the ASEAN, namely, Vietnam, the Philippines, Malaysia, and Brunei. The maritime boundary between China and Vietnam in the Gulf of Tonkin (Beibu Wan in Chinese, Vinh Bac Bo in Vietnamese) has also been in dispute for years.

On May 12, 1977, Vietnam issued the "Statement of the Government of the Socialist Republic of Vietnam on the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone and the Continental Shelf on Vietnam."⁸ Point 4 of the statement states that:

6. For the text of the law, see Law on the Territorial Sea and the Contiguous zone of the Republic of China and Law on the Exclusive Economic Zone and the Continental Shelf of the Republic of China, published by Ministry of the Interior, Republic of China, 1999 (both in Chinese and English).

7. Presidential Order Hua Zon Yi Zi (1) No. 8700010340 and No. 8700010350. See Republic of China, *Legislative Gazette*, Vol. 87, 1998, pp. 378-386.

8. For the statement, see *The Third Workshop on Managing Potential Conflicts in the South China Sea*, Yogyakarta, June 28 – July 2, 1992, pp. 219-220.

The Continental shelf of the Socialist Republic of Vietnam comprises the Seabed and subsoil of the submarine areas that extend the Vietnamese territorial sea throughout the natural prolongation of the Vietnamese land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baseline used to measure the breadth of the Vietnamese territorial sea where the outer edge of the continental margin does not extend up to that distance.⁹

On November 12, 1982, Vietnam promulgated the "Declaration on Baseline of Territorial Waters."¹⁰ Point 3 of the declaration provides

The Bac Bo Gulf is a gulf situated between the Socialist Republic of Vietnam and the People's Republic of China. The maritime frontier drawn in the gulf between Vietnam and China is defined in Article 2 of the Convention on the Delimitation of the Frontier between Vietnam and China signed on June 27, 1887, between France and the Qing Dynasty.

The waters in the part of the gulf belonging to Vietnam constitute the historic waters pertaining to the juridical regime of the internal waters of the Socialist Republic of Vietnam. The baseline from Con Co Island to the opening of the gulf will be defined following the settlement of the question of the opening line of the Gulf.¹¹

On November 28, 1982, China issued a statement in response to Vietnam's declaration mentioned above. In the statement, China pointed out that "the Sino-Vietnamese boundary Delimitation Convention signed between China and France in 1887 did not in any way delimit the maritime area in the Beibu Gulf."¹² Accordingly, Beijing claims that no maritime boundary line has ever existed in the sea of the Gulf of Tonkin. In addition, Beijing stated that the boundary line in the Gulf of Tonkin as asserted by Vietnam is illegal and null and void.¹³

9. *Ibid.*

10. For the Declaration, see *Law of the Sea Bulletin*, No. 1, September 1983, pp. 74-75.

11. *Ibid.*

12. For the statement, see *Law of the Sea Bulletin*, No. 1, September 1983, p. 76.

13. *Ibid.*

In any future delimitation of the maritime boundary in the Gulf of Tonkin, Vietnam will seek to apply the natural prolongation of land territory principle, which would be more advantageous to Vietnam than China because of the sea-bed topography. For China, recognizing that the application of the natural prolongation of land territory principle would work against its own interest, it is likely that Beijing would seek to apply the equitable principle and to emphasize that any agreement reached should be effected through negotiations. In this regard, it is relevant here to note that in China's 8-point peace proposal to Vietnam following the Sino-Vietnamese conflict of February 1979, Beijing proposed:

Each side shall respect the other side's sovereignty over its twelve nautical mile territorial sea, and the two sides shall demarcate their respective economic zones and continental shelves in the Beibu Gulf and other sea area in a fair and reasonable way in accordance with the relevant principles of present-day international law of the sea.¹⁴

In addition to the territorial disputes over the Paracel Islands and the Spratly Islands, the use of the method of straight baselines¹⁵ and the claim of part of the waters in the Gulf of Tonkin as historic waters by Vietnam,¹⁶ and the use of the method of straight baselines by China in the Paracel Islands and the waters adjacent to the Leizhou Peninsula¹⁷ would further complicate the future delimitation of maritime boundary between the two countries in the Gulf of Tonkin and the South China Sea.

The territorial disputes over ownership of the Spratly Islands between China and the Philippines, like the case between Beijing and Hanoi, also complicate the delimitation of maritime boundary

14. *Beijing Review*, May 4, 1979, pp. 10-18.

15. For discussion, see Mark J. Valencia and Jon M. Van Dyke, "Vietnam's National Interests and the Law of the Sea," *Ocean Development and International Law*, Vol. 25, 1994, pp. 217-250.

16. See Statement of 12 November 1982 by the Government of the Socialist Republic of Vietnam on the Territorial Sea Baselines of Vietnam, United Nations, *The Law of the Sea: Current Developments in State Practice*, New York, 1987, p. 147 and Choon-ho Park, "Vietnam, Kampuchea, and the Law of the Sea," in Choon-ho Park and Jae Kyu Park, eds., *The Law of the Sea: Problems from the East Asian Perspective* (Honolulu: Law of the Sea Institute, University of Hawaii, 1987), pp. 445-449.

17. Daniel J. Dzurek, "The People's Republic of China Straight Baseline Claim," *IBRU Boundary and Security Bulletin Summer 1996*, pp. 77-89 and Office of Ocean Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, "Straight Baselines Claim: China," *Limits in the Seas*, No. 117, July 9, 1996.

between Beijing and Manila in the South China Sea. Provided that the sovereignty issue is put aside, it is less likely for a conflict to arise in the delimitation of the boundary of the EEZ and the continental shelf in the South China Sea between China and the Philippines. This is mainly because both of them claim to use the equitable principle to delimit the overlapped continental shelf. According to the Philippine Proclamation No. 370, issued on March 20, 1968, "[i]n any case where the continental shelf is shared with an adjacent state, the boundary shall be determined by the Philippines and that state in accordance with legal and equitable principles."¹⁸ In addition, Section 1 of Presidential Decree No. 1599 Establishing an Exclusive Economic Zone and For Other Purposes, "where the outer limits of the zone as thus determined overlap the exclusive economic zone of an adjacent or neighboring state, the common boundaries shall be determined by agreement with the state concerned or in accordance with pertinent generally recognized principles of international law on delimitation."¹⁹

In any future delimitation of the maritime boundary in the South China Sea between the Philippines and China, major conflict might arise because of the Chinese straight baseline claim and the Philippines' "treaty limit" claim. The method of straight baselines was applied to the Paracel Islands by China on May 15, 1996. According to Articles 2 and 3 of the 1992 PRC Territorial Sea Law, the method of straight baselines will also be applied to the Spratly Islands. However, the baselines and base points of the territorial sea will be announced in the future. The method of straight baselines, which is used to measure the breadth of the territorial sea, the EEZ, and the continental shelf, if accepted by the countries concerned, would entitle China to claim a huge area of EEZ and continental shelf in the South China Sea, which is certain to overlap with the EEZ and the continental shelf of the neighboring countries such as the Philippines, Vietnam, Malaysia, Brunei, and Indonesia. For the Philippines, the limit of its territorial sea is defined in accordance with Article 3 of the Treaty of Paris concluded between the United States and Spain on December 10, 1898 (the so-called

18. See Proclamation No. 370 Declaring as Subject to the Jurisdiction and Control of the Republic of the Philippines All Mineral and Other Natural Resources in the Continental Shelf of the Philippines, March 20, 1968, in Pascifico A. Castro, ed., *The Philippines and the Law of the Sea* (Manila, Philippines: Foreign Service Institute, 1983), pp. 43-44.

19. For the Presidential Decree No. 1599, *ibid.*, pp. 41-42.

Treaty Limit).²⁰ According to Act No. 3046 of 17 June 1961 of the Philippines, "all waters beyond the outermost islands of the archipelago but within the limits of the boundaries set forth in [the Treaty of Paris] comprise the territorial sea of the Philippines."²¹ This position has been challenged and will create problems in any future delimitation of maritime boundaries between the Philippines and its neighboring states. Although the Philippines declared its intention to harmonize its domestic legislation with the provision of the 1982 LOSC in October 1988,²² necessary steps have not yet been undertaken.

Indonesia is not a participant in the Spratly Islands dispute. However, it has been playing an important role as "honest broker" since 1990, when Jakarta organized the informal Workshop on Managing Potential Conflicts in the South China Sea, attended by the countries in the South China Sea area. After setting the territorial baselines around the Paracel Islands and announcing that baselines around the Spratly Islands will also be set at another time by China in May 1996, it is questioned whether Indonesia could retain its role as "honest broker" in the Spratly Islands dispute.²³ By setting territorial baselines around the Spratly Islands, China would extend its EEZ and the continental shelf to the Natuna Islands, which are within Indonesia's 200-nautical-mile EEZ. Accordingly, it will be necessary for the two countries to delimit their maritime boundary in the area adjacent to the Natuna Islands, where it is believed to have "the largest concentration of gas reserves in the world."²⁴ Malaysia is also concerned about China's announcement of the baselines in the South China Sea and its impact on Malaysia's EEZ and the continental shelf. In July 1996, during the China-ASEAN dialogue, Malaysia's foreign minister raised a question on behalf of the ASEAN to the Chinese foreign minister, asking the minister to clarify the meaning and implications of the announcement of the baselines in the Paracel Islands. According to Malaysia's foreign minister, future talks on the issue will be continued.²⁵

20. For the Treaty, *ibid.*, pp. 15-22.

21. For the Act, see E.D. Brown, *The International Law of the Sea*, Vol. II, Documents, Cases and Tables (Dartmouth, 1994), p. 100.

22. For the Declaration, *ibid.*, p. 103.

23. Douglas Johnson, "Drawing into the Fray: Indonesia's Natuna Islands Meet China's Long Gaze South," *Asian Affairs*, 1998, p. 153-161.

24. *Ibid.*, p. 153.

25. *United Daily News*, July 25, 1996, p. 9.

Certainly, there also exist problems relating to delimitation of maritime boundary in the South China Sea between Taiwan and member states of the ASEAN. However, due to the lack of diplomatic relations and the concerns over China's reaction, it is unlikely that the member states of the ASEAN will talk about the boundary issue with Taiwan in the near future.

C. Excessive Maritime Claims

The term "excessive maritime claims," as defined by J. Ashley Roach and Robert Smith, means "[c]laims by coastal States to sovereignty, sovereign rights or jurisdiction over ocean areas that are inconsistent with the terms of the LOS Convention."²⁶ Excessive maritime claims, according to Roach and Smith, are illegal in international law. There are several claims in China's and Taiwan's maritime legislation which could arguably be put in the category of "excessive maritime claims" as defined above.

Article 4 of the 1998 ROC Territorial Sea and Contiguous Zone Law provides that Taiwan determines its baselines by a combination of the methods of straight baselines in principle and the method of normal baseline as exception.²⁷ Judging from the coastal topography of Taiwan, it can hardly be stated that Taiwan's coastline is "so deeply indented" or having "a fringe of islands along the coast in its immediate vicinity"²⁸ to justify employment of the method of straight baselines to delineate its territorial waters in principle. If Taiwan determines the baselines of its territorial sea by using a combination of the method of normal baseline in principle and the straight baselines as exception, the claim could be considered as consistent with the 1982 LOSC. However, on December 31, 1998, it was reported that Taiwan promulgated the adoption of a combination of the method of straight baselines in principle and the normal baselines as exception, which could possibly give rise to legal argument, mainly because the Taiwanese coasts are neither extremely indented nor having a series of islands located along the coasts.²⁹ Taiwan also promulgated the base-points for drawing baselines to measure its territorial waters adjacent to Taiwan and its associated islands, the disputed Tiao-Yu-Tai Islets (Senkaku Islands) in the East China Sea, and the Pratas Islands as well as the disputed

26. J. Ashley Roach and Robert Smith, *United States Responses to Excessive Maritime Claims* (The Hague/Boston/London: Martinus Nijhoff Publishers, 1996), p. 15.

27. *Supra* note 7.

28. See Article 7 (Straight baselines) of the 1982 LOSC.

29. *United Daily* (Taipei), January 1, 1999, p. 8.

Scarborough Reef in the South China Sea. However, the promulgation did not declare base-points and baselines for drawing territorial waters adjacent the claimed Spratly Islands because of political sensitivity involved. It only stated that they will be announced in a later time.³⁰

Another maritime claim of Taiwan, which might be challenged by members of the international community, is the claim to the waters encircled by the nine dotted (broken, U-shaped, or tongue-shaped) lines shown on the Chinese map of the South China Sea as the historic waters of the ROC. In the Prologue of the Policy Guidelines for Nanhai (South China Sea), approved by Taiwan's Executive Yuan in April 1993, it was claimed that "[t]he South China Sea area within the historic water limit is the maritime area under the jurisdiction of the Republic of China, in which the Republic of China possesses all rights and interests."³¹ In September 1993, a two-day conference on the South China Sea was held in Taipei, where both the Interior Minister and the Premier reiterated that the waters of the South China Sea have long been ROC historic waters.³² On March 25, 1995, ROC forces fired on a Vietnamese freighter which had strayed into a restricted area around Itu Aba in the Spratly Islands. Later that month, Taipei announced that three patrol boats of its maritime police would be sent to the Spratlys. However, the mission was later called off in response to international concerns that such a move would destabilize the situation in the South China Sea at that time.³³ On May 11, 1995, in response to the statement on the Spratlys and the South China Sea issued by the U.S. Department of State on May 10, 1995, Taiwan's Ministry of Foreign Affairs issued a five-point statement on the South China Sea issue. In it, Taipei reasserted its claim to the waters in the South China Sea encircled by the nine dotted lines as historic waters of the ROC.³⁴ In response, Vietnam declared on May 18, 1995 that Taiwan's claim was ill-founded and ridiculous.³⁵ On May 28, 1996, Taiwan's Ministry of Foreign Affairs reiterated that the historic waters claim in the South China Sea would be

30. *Ibid.*

31. For the Policy Guidelines, see Kuan-Ming Sun, "Policy of the Republic of China towards the South China Sea," *Marine Policy*, Vol. 19, No. 5, 1995, Appendix, p. 408.

32. *United Daily News*, September 7, 1993, p. 1.

33. *China News*, April 4, 1995, p. 1.

34. *China Times*, May 12, 1995, p. 2.

35. *United Daily News*, May 19, 1995, p. 2.

maintained unyieldingly.³⁶ As of today, Taiwan's historic waters claim in the South China Sea remains unchanged.

As far as China's maritime legislation is concerned, there are three major claims which have been included in the category of "excessive maritime claims." The first one is related to the requirement that foreign military ships must obtain permission from the Chinese authorities in order to enter its territorial sea. The second one is China's application of the method of straight baselines in delimiting the boundary of its territorial sea. Third is its historic claim to the waters encircled by the nine-dotted lines shown on the Chinese map of the South China Sea. The first two claims were addressed in last chapter. Here we deal with China's third maritime claim. The nature of the nine dotted lines drawn in the Chinese map, encompassing about 80% of the South China Sea, has been subject to arguments for some time. The dotted lines are also specified in a map of the South China Sea Islands, prepared by the Central Intelligence Agency of the United States as the Chinese claim.³⁷ As reported by Barry Wain, "[i]t isn't clear whether the line is meant to assert a maritime boundary, or lay claim to everything within it."³⁸ Indeed, the Chinese government is taking an ambiguous position on the nature of the nine dotted lines. Jon M. Van Dyke pointed out in June 1995 that "no clear position has been taken by Chinese officials on whether the Chinese historical claim is only to the islands within the dotted line or whether the claim includes the waters surrounding those islands."³⁹ Van Dyke also stated that there is a widespread desire for clarification of the nature of the nine dotted lines from the PRC government.⁴⁰ During a meeting held in Beijing in July 1995, the Chinese foreign minister Qian Qichen skillfully avoided answering a question raised by the Indonesian foreign min-

36. *Central Daily News*, May 29, 1996, p. 2.

37. MAP, United States, Central Intelligence Agency, South China Sea Islands, G9237, S6, 1988, U5.

38. Barry Wain, "What Does China Want," *The Asian Wall Street Journal*, July 7 and 8, 1995, p. 6. See also Philip Bowing, "The Spratlys: China's Neighbors Are Losing Patience," *The International Herald Tribune*, April 7, 1995, p. 8; and Rigoberto Tiglao and John McBeth, "Territorial Imperative," *Far Eastern Economic Review*, February 23, 1995, p. 16.

39. Unpublished material taken from informal South China Sea Meeting #2, Jon M. Van Dyke, University of Hawaii Law School, June 14, 1995, United States Institute of Peace, 7th floor Conference Room. Summary of discussion was prepared by Scott Snyder, Program Officer, U.S. Institute of Peace. Citation of this summary was permitted by Mr. Scott Snyder on August 19, 1998.

40. *Ibid.*

ister Ali Alatas regarding why the nine dotted lines on the Chinese map seems to claim the whole South China Sea, including waters north of the Indonesian island of Natuna.⁴¹

Although Beijing did not assert publicly that the waters enclosed by the nine dotted lines in the Chinese map of the South China Sea are historic waters of China, some commentators maintain that the nine dotted lines stand for the Chinese historic waters claim.⁴² Among the Chinese scholars, perhaps Pan Shiyong is the one who takes the strongest position on the legal status of the PRC's historic title marked by the nine dotted lines.⁴³ Pan asserts that:

1. Sovereignty over the islands, reefs, atoll, and shoals inside the (nine dotted) lines belongs to China.
2. Waters inside the straight baselines of the archipelagos are China's internal waters but, as the Nansha Islands happen to be on a course of international navigation, this should not constitute any impediment to other nations' right to passage.
3. China is entitled to all natural resources, biological or non-biological, of the subsoil and sea-bed and of the superjacent waters in the sea areas between the "nine interrupted lines of national boundary" and the internal water line.
4. In the waters beyond China's internal water line, other nations will continue to enjoy the freedom of navigation, flying-over or installing submarine cables and pipes or engaging in related marine activities which are legal in international law.⁴⁴

Chen Dergong of the Institute for Marine Development Strategy, State Oceanic Administration of the PRC, also pointed out that the

41. Nayan Chanda, "Long Shadow: Southeast Asians have China on their mind," *Far Eastern Economic Review*, Dec. 28 & Jan. 4, 1996, p. 18.

42. See Daniel Dzurek, "The Spratly Islands Dispute: Who's On First?" *IBRU Maritime Briefings*, Vol. 2, No.1, 1996, pp. 11-15.

43. See Pan Shiyong, *The Petropolitics of the Nansha Islands — China's Indisputable Legal Case* (Hong Kong: Economic Information & Agency, July 1996), Pan Shiyong, "South China Sea and the International Practice of the Historic Title," paper presented at the South China Sea Conference, held in Washington in September 1994 by American Enterprise Institute (AEI), and Pan Shiyong, "The Spratly Islands, Belonging to Whom?" *Dang Dai Hai Jun* [Contemporary Navy], July/August 1995, pp. 19-20, 27 (in Chinese).

44. Pan Shiyong, *The Petropolitics of the Nansha Islands — China's Indisputable Legal Case*, *ibid.*, p. 154.

nine dotted lines may be treated as the boundary, within which the PRC enjoys the historic rights over the living- and non-living resources found in the subsoil and sea-bed and the superjacent waters in the sea areas.⁴⁵

There are other scholars in China, who take a different views regarding the meaning of the nine dotted lines and the legal status of the waters enclosed by the lines. Zhao Enpo of China's Law of the Sea Association questioned the position that the waters enclosed by the nine dotted lines are historic waters of the PRC. He argues that the claim is unrealistic. Instead, he proposes that the application of the legal regime of archipelagos to the South China Sea to help maintain and assert the PRC's maritime rights and interests in the said sea areas would be advantageous to Beijing in comparison with the historic waters claim.⁴⁶ If the method of straight baselines were to be drawn to enclose the Paratas Islands, the Paracel Islands and the Spratly Islands, the size of the EEZs of the three groups of the islands, when added up, would not be much smaller than the size of the sea areas enclosed by the nine dotted lines.⁴⁷ Gao Zhiguo, now Deputy Director of the Institute for Marine Development Strategy, State Oceanic Administration, wrote in 1994 that the nine dotted lines on the Chinese map are the lines that delineate ownership of islands rather than a maritime boundary in the conventional sense. He stressed, "[a] careful study of Chinese documents reveals that China never has claimed the entire water column of the South China Sea, but only the islands and their surrounding waters within the line."⁴⁸ However, it should be noted what Lee Zhaoshin, the former PRC vice minister of foreign affairs, said about the nine dotted lines when he asked the PRC's highest legislative body to agree to Beijing's ratification of the 1982 LOSC in May 1996. He said, "we are still able to maintain unyieldingly our rights in the Spratly Islands based upon: (1) the nine dotted lines which have long been marked and delineated in the

45. Chen Dergong, "Legal Questions Concerning China's Maritime Rights in the South China Sea," paper presented at the South China Sea Conference held in Taipei, Taiwan, February 1994, p. 6 (in Chinese).

46. Zhao Enpo, "The Question of Our Country's Application of Legal Regimes in the South China Sea," paper presented at the Conference of Maritime Economic Cooperation in the Asia-Pacific Region: the Current Situation and Prospects of the South China Sea, Center for Asian Pacific Studies, Lingnan College, May 26 - 30, 1991, p. 9 (in Chinese).

47. *Ibid.*

48. Zhiguo Gao, "The South China Sea: From Conflict to Cooperation," *Marine Policy*, Vol. 25, 1994, p. 346.

Chinese map of the South China Sea; (2) the PRC fishermen have long been conducting traditional fishing activities in the Spratly Islands; and (3) the 1982 LOSC contains special regulations on the historic waters.⁴⁹ In addition, it should be reminded that Article 14 of the 1998 PRC EEZ and Continental Shelf Law provides that "the enjoyment of the historic rights of the People's Republic of China shall not be in any way affected by the regulations provided in this law."⁵⁰ Mark Valencia of the East-West Center, University of Hawaii, also commented that the law stipulates that "it does not affect China's historic rights, that is, China will not drop its possible claim to much of the South China Sea."⁵¹

The United States has a great interest in the ocean. Maintaining stability and order-in change, according to Edward L. Miles, is a critical U.S. interest in the law of the sea.⁵² However, it is likely that stability and order-in-change could be disrupted because of territorial and/or maritime boundary disputes being escalated into armed conflict between the PRC and its neighbouring states in the South China Sea as a result of rigid implementation of the maritime legislation discussed earlier. In addition, the United States would be forced to take actions to respond to the excessive maritime claims by the claimant countries in the South China Sea if its maritime interests were affected and maritime rights encroached upon.

II. POTENTIAL TRIGGERS OF CONFLICTS IN THE SOUTH CHINA SEA

Ralph A. Cossa of Pacific Forum CSIS once suggested that [d]espite the high stakes involved, the prospects of military confrontation over the Spratlys today appear low, especially among the various ASEAN claimants, who have a proven history of resolving disputes peacefully. However, it would be naïve to completely rule out the possibility of the use of force in the South China Sea. This is especially so if major oil discoveries are made or if energy shortages

49. This author's translation, *supra* note 45.

50. This author's translation, *supra* note 45.

51. Mark J. Valencia, "Beijing and the South China Sea: Movement of Mirage?" *The Business Times*, Weekend edition, August 29-30, 1998.

52. Edward L. Miles, "U.S. Security Interests in a Post-Cold World and the Law of the Sea," *Columbia Journal of Transnational Law*, Vol. 36, 1997, pp. 377-378.

add to the perceived (even if unproven) importance of the Spratlys.⁵³

Accordingly, he divided those potential triggers of conflict, which were identified in a conference entitled "Promoting Trust and Confidence in Southeast Asia: Cooperation and Conflict Avoidance" held in Manila in October 1997, into nine categories. They include (1) Exploration or Exploitation Activity; (2) Creeping Occupation; (3) Armed Displacement; (4) Armed Enforcement; (5) Accidents or Miscalculations; (6) Other Acts of provocation; (7) external/ Broader Regional Tensions; and (8) Threats to the Sea Lines of Communications (SLOCs); and (9) Asian Financial Crisis.⁵⁴

Since 1998, actions and reactions have been continuously taken by the claimant countries in the South China Sea, which, if handled inappropriately, might evolve into real triggers of serious conflict and jeopardize peace and stability in the region. For the sake of discussion, these actions and/or reactions are divided into six categories: (1) Resources Exploration or Exploitation Activities in the Disputed Area; (2) Occupation and Setting up Structures on the Disputed Islands; (3) the Seizure of Fishing Boats; (4) Military Patrolling, Reconnaissance and Standoffs in the Disputed Area; (5) Military Build-up; and (6) Asian Financial Crisis. The last category, i.e., Asian financial crisis as a potential trigger of conflict in the South China Sea, will be singled out for discussion later.

A. Exploration or Exploitation and Other Relevant Activities in the Disputed Area

The mere act of exploration or exploitation of maritime resources, living or non-living, in the disputed area could trigger conflict, since such activity could be interpreted as direct challenges to another claimant country's sovereignty. China and Vietnam were on the brink of armed conflict in the Spratly Islands in 1994, mainly because of oil exploration and exploitation related activities conducted in areas close to Vanguard Bank. Since 1998, a number of actions related to resources exploration or exploitation, and other sovereignty-bolstering activities have been reported in the press.

53. *Security Implications of Conflict in the South China Sea: Exploring Potential Triggers of Conflicts*, a Pacific Forum CSIS special report, prepared by Ralph A. Cossa, March 1998, p. 9.

54. The identified potential triggers of conflict are contained in Appendix F of the Pacific Forum CSIS special report. For discussion of the nine categories of potential triggers, *ibid.*, pp. 9-13.

In January 1998, the Chinese archaeologists, who conducted a series of investigations in the South China Sea, located 2,000 shipwrecks off the southern coast of China. The findings were then used to bolster China's claims of historical control over disputed islands in the South China Sea.⁵⁵ In mid-April 1998, three Chinese ships, said to be an oceanographic research vessel and two fishery protection vessel, were reportedly observed anchored in the vicinity of the Union Banks in the disputed Spratly area.⁵⁶ In late-April 1998, Vietnam issued a statement in response to China's plan to develop tourism on the Paracel Islands, saying that any illegal activities of foreign countries on the Spratly and Paracel Islands would violate its territorial sovereignty.⁵⁷ In April 1998, Vietnam bolstered its claims of sovereignty over the Spratly Islands by sending its politburo member Pham The Duyet and Defence Minister Lt.-Gen. Dao Tong Lich to visit the contested chain of islands.⁵⁸ In May 1998, Vietnam's navy commander visited the Spratly Islands again to bolster Hanoi's sovereignty claims over the islands.⁵⁹ In September 1998, Vietnam protested China's move to pursue an oil exploration deal in the South China Sea with U.S. firm Crestone Energy Corporation in the area claimed by Vietnam. Hanoi stated that "China's cooperation with an American oil company in assessing crude oil deposits in the Tu Chinh Coral Reef on Vietnamese continental shelf has clearly violated Vietnam's sovereignty."⁶⁰ In December 1998, Taiwan's cabinet approved the first legal definition of its sea borders, including the disputed islands in the South China Sea.⁶¹ In March 1999, the National Mapping and Resources Information Authority of the Philippines redefined the country's territory by drawing a new map which included the disputed Spratly

55. "Archaeological Finding Bolstered Territory Claim," *Agence France Presse*, January 25, 1998.

56. "China Tests Its Rival's Resolve in the Spratlys," *Janes Intelligence Review*, October 1, 1998, p. 2.

57. "Vietnam: The Week in Review: focus on National Assembly Meeting," *Saigon Times*, April 25, 1998.

58. "Vietnamese Politburo Member Tours Spratly Islands," *Agence France Presse*, April 17, 1998; and "Politics & Polity: Regional Briefing," *Far Eastern Economic Review*, April 30, 1998, p. 16.

59. "Vietnamese Navy Commander Tours Spratly Islands," *Agence France Presse*, May 3, 1998.

60. "Vietnam Rejects China's Oil Deal in Spratly Islands," *AFX News*, September 5, 1998; see also *Agence France-Presse*, September 5, 1998.

61. "Taiwan Includes Disputed Isles within Sea Borders," *Kyoto News*, December 31, 1998.

Islands in the South China Sea.⁶² Also in March, 1999, China announced a two-month fishing ban in the South China Sea. In response, Defense Secretary Orlando Mercado of the Philippines commented that "There should instead be a building ban, not a fishing ban."⁶³ In April 1999, it was reported that Taiwan was planning to invest more than NT\$100 million (about US\$3.13 million) in the Pratas Islands in the South China Sea, which Taipei controls, aimed at reinforcing its jurisdictional claim.⁶⁴

B. Occupation and Setting Up Structures on the Disputed Islands

China's occupation of Mischeif Reef in early 1995 and the continuous construction of structures on the occupied island is the most conspicuous example of this category of potential triggers of conflict in the South China Sea. However, it should be noted that China is not the only claimant country being accused of occupying new islands in the South China Sea or setting up structures on the disputed islands it controls. Other claimant countries such as the Philippines, Vietnam, and Malaysia have done exactly the same thing on the disputed islands they control in the area. No wonder Defense Secretary Orlando Mercado of the Philippines lamented in March 1999 that "[w]hile the construction business is down in Southeast Asia because of the foreign exchange problem, there seems to be a construction boom in the Spratly Islands."⁶⁵ Although the claimant countries repeatedly urged other claimant countries refraining from taking actions that alter the status quo, they themselves failed to honour that call.

In March 1998, China set up a ground satellite station on Yongxing Island (Woody Island) in the Paracel Islands also claimed by Vietnam and Taiwan.⁶⁶ In April 1998, Vietnam commented on the news that Taiwan had decided to build a specialized harbor for its high-speed patrol boats on the Spratly Islands. Vietnam's foreign ministry asserted that any illegal activities on the Spratly Islands and Paracel Islands would violate its territorial sovereignty and

62. Luz Baguioro, "Manila's New Map Includes Disputed Islands," *The Strait Times*, March 3, 1999.

63. "RP to Ignore Chinese Fishing Ban," *Manila Standard*, March 27, 1999.

64. "KMT-run Firm to Develop Contested Islet," *China News* (Taipei), April 7, 1999.

65. "Philippines Sees 'Construction Boom' in Spratlys," *Reuters*, March 9, 1999.

66. "China — Lays Security Net over Disputed Islands," *Periscope-Daily Defense News Capsules*, March 3, 1998.

therefore be considered null and void.⁶⁷ In September 1998, in response to Vietnam's occupation of the two islands in the Spratly area, namely, Orleans Shoal (Aonan in Chinese) and Kingston Shoal (Jindun in Chinese), China issued a statement, demanding that Vietnam withdraw immediately from the occupied islands.⁶⁸ China also asked Hanoi to dismantle all installations built there. Vietnam rejected the Chinese demand.⁶⁹ In late October 1998, the Philippines announced that it was to upgrade an airstrip and build a perimeter sea-wall as part of a 51-million peso (about US\$1.2 million) plan for the biggest island garrisoned by its troops in the disputed Spratlys chain, namely Pag-asa (Thi-Tu Island).⁷⁰ In response, China demanded that Manila stopped improving its facilities on Pag-asa Island, warning that the buildup threatened to inflame tensions in the region.⁷¹

In early November 1998, tensions mounted in the Spratly Islands when the Philippines fired off an angry protest against China after discovering that Chinese warships had been stationed in the disputed waters near the Spratly Islands and the Chinese had been constructing concrete buildings on Mischeif Reef that Beijing occupied in early 1995. In a two-page formal letter of protest, Manila demanded the withdrawal of Chinese warships, a stoppage of the construction and renovation of the structures. In response, China's embassy in Manila stated, "It is a matter within its sovereignty that China conducts proper and necessary maintenance and reinforcement to the sheltering facility on the Meiji (Mischief) Reef, and it serves completely the purpose of peaceful uses."⁷² On November 10, 1998, the Philippines released pictures and video clips of the new permanent structures built by China on the reef in support of Manila's accusation that the structures were not merely shelters for fishermen but had a military value.⁷³ In addition, President Estrada of the Philippines also ordered its armed forces to step up military

67. "Vietnam: Foreign Relations, April 25-May 1, 1998," *Saigon Times*, April 25, 1998.

68. "China Demands Vietnam Withdraw from Reefs in Spratlys," *Kyodo News*, September 8, 1998.

69. "Vietnam Rejects China's Spratly Demand," *Kyodo News*, September 9, 1998.

70. "Manila Outlines Development Plan for Spratly Island," *China News* (Taipei), October 28, 1998, p. 5.

71. "Manila Rejects Beijing's Protest over Spratlys," *Kyodo News*, March 3, 1999.

72. "Chinese Ships Enter Spratlys," *The Manila Times*, November 6, 1998.

73. "Manila Release Proof of Chinese 'Buildup' on Isles," *The Strait Times*, November 11, 1998.

patrols in the Spratly Islands area.⁷⁴ In January 1999, it was reported that the Philippines was to tender for a dual-use radar system to counter China's military buildup in the Spratly Islands.⁷⁵

In February 1999, according to a report containing spy photos and other sensitive intelligence, China was building a fuel-storage facility next to the airstrip on the Woody Islands. Some U.S. military officials believed that the fuel depot was built for Su-27s or future Chinese FB-7 fighter bombers to increase the range of the jets and allowed them to be able to reach the Spratly Islands.⁷⁶ Also in February 1999, the Philippine defense secretary Orlando Mercado said that China had built what appeared to be a helipad, radar facilities and possible gun emplacements on Mischief Reef.⁷⁷ In March 1999, China and the Philippines had a two-day meeting, in which Beijing refused all four proposals made by Manila, namely: removal of Chinese troops and dismantling of structures on Mischief Reef; facilities to be turned over to the Philippine government under mutually acceptable arrangements; joint use of the facilities on Mischief Reef; and Beijing's guarantee that there will be no more building of any structures on any islands in the Spratly Islands group claimed by the Philippines.⁷⁸

In June 1999, Malaysia set up structures on the Investigator Shoal claimed by the Philippines. In August 1999, again, Malaysia constructed structures on Erica Reef also claimed by Manila. The Philippines lodged protests with Kuala Lumpur over the occupation and construction in June and August 1999 respectively.⁷⁹ In September 1999, a senior Philippine defense official said that Vietnam was upgrading its old structures on Cornwallis South Reef and Alison Reef and Taiwan was improving its military structures on Itu Aba Reef.⁸⁰ The most recent report regarding setting up structures on the disputed islands in the Spratly Islands appeared in October

74. "Erap Sends More Troops to Spratlys," *The Manila Times*, November 11, 1998.

75. "Philippines Tenders for Radar System, Citing Spratly Buildup by China," *Agence France-Presse*, January 11, 1999.

76. Bill Gertz, "China Makes Upgrade to Islands Base, Coastline," *The Washington Times*, February 11, 1999.

77. "Manila: Chinese Helipad, Radars Seen in Spratlys," *Reuters*, February 16, 1999.

78. "DFA Sees Little Hope in Talks with China," *BusinessWorld* (Philippines), March 26, 1999.

79. "Philippines Protests Malaysian Occupation of Disputed Spratly Reef," *Agence France-Presse*, August 20, 1999.

80. "Vietnam, Taiwan Fortifying Structures in the Spratlys," *Kyodo World News Service*, September 21, 1999.

1999. As reported, the Philippine government protested Vietnam's enlargement of a two-story octagonal building it constructed on Tennent Reef (Pigeon Reef) in 1992 into a three-story structures.⁸¹

C. The Seizure of Fishing Boats in the Disputed Area

The seizure of fishing boats within claimed maritime boundaries is considered an armed enforcement act of the claimant country. In 1998 and 1999, the Philippines arrested several Chinese fishing boats operating in the disputed waters in the South China Sea. The detained Chinese fishermen were also sentenced to jail terms by the domestic courts of the Philippines. China considered this act provocative and expressed its grave concern over the matter.

In January 1998, 22 Chinese fishermen were detained by the Philippine officials for poaching near the disputed Scarborough Shoal, north of the Spratly Islands. The detained fishermen were charged of "unlawful entry, illegal fishing and collection of corals."⁸² Again, in March 1998, 29 Chinese fishermen were arrested by a Philippine navy patrol near Scarborough Shoal off the western Philippine province of Zambales.⁸³ In July 1998, Vietnam arrested 57 Chinese fishermen in Vietnamese claimed waters.⁸⁴ In November 1998, the Philippine navy seized another 20 Chinese fishermen operating in the waters near the disputed Mischief Reef.⁸⁵ The detained Chinese fishermen said that they were fishing in Chinese territory and the Chinese government demanded the immediate release of the fishermen.⁸⁶ In total, the Philippines detained 11 fishing boats and 71 fishermen from China in 1998, which, according to the Chinese officials, caused a loss of \$800,000 to \$1 million to these fishermen.⁸⁷ In February 1999, it was reported that the 20 Chinese

81. "Philippines Protests attack by Vietnamese in Spratlys," *Taiwan News*, October 29, 1999, p. 5.

82. "Philippine Detained Chinese Fishermen," *MuziNet Dailynews* at <<http://www.latelinenews.com>>, January 22, 1998, visited on December 25, 1999.

83. "China Urges Manila to Release Fishermen," *MuziNet Dailynews* at <<http://www.latelinenews.com>>, March 19, 1998, visited on December 25, 1999.

84. "Vietnam Rejects Report of Tension with China," *Agence France-Presse*, August 9, 1999.

85. "Philippines Detained 20 Chinese in Spratly," *Reuters*, November 30, 1998.

86. "Philippines Says China Fishermen Should Be Charged," *Reuters*, December 3, 1998.

87. "China Blames Philippines for Spratly Tension," *Agence France-Presse*, March 31, 1999.

fishermen who were arrested in November 1998, had been released on January 29, 1999.⁸⁸

In May 1999, a Chinese fishing boat was sunk by a Philippine navy ship near the disputed Scarborough Shoal in the South China Sea. The Philippines described the sinking as an accident, but China claimed that the navy ship intentionally smashed the Chinese fishing boats.⁸⁹ Later on that month, it was speculated that the Philippine government staged the sinking incident "to highlight the threat from China and the need for U.S. military muscle, which would be displayed in regular joint exercise under the [U.S.-Philippine] Visiting Forces Agreement."⁹⁰ In June 1999, again, it was reported that two Chinese fishermen had been arrested "just 300 yards (273 meters) from the shore of a Philippine-garrisoned island, Pag-asa in the Spratly chain."⁹¹

D. Military Patrolling, Reconnaissance, and Other Kinds of Provocative Acts in the Disputed Area

Showdowns between warships patrolling in disputed waters or handoffs of military aircraft flying over disputed areas could possibly evolve into gunfire exchange, which could further escalate into military engagement. Firing by stationed troops on foreign vessels which sail close to the disputed islands or on foreign aircraft which fly over the claimed islands are considered acts of provocation, could possibly draw strong protests or reactions from the concerned country. In 1998 and 1999, several incidents of this kind were reported.

In January 1998, Vietnam's soldiers stationed on the disputed Tien Nu Reef of the Spratly Islands group fired on a Philippine boat which was gathering sea cucumbers in the waters nearby Vietnam's island. The incident drew a strong response from the Philippines, which fired off a high-level protest against Hanoi's act. Philippine foreign Secretary Domingo Siazon claimed that the shooting was "a violation of the code of conduct" between the two countries which calls for peaceful means to settle overlapping territorial claims in the South China Sea.⁹²

88. "Spratlys Prisoners Sent Back," *Agence France-Presse*, February 18, 1999.

89. "Sino-Philippine War of Words over South China Sea Shoal Escalates," *Agence France-Presse*, June 10, 1999.

90. Rigoberto Tiglao, "Growing Up: Manila's Military Pact with U.S. Signals New Maturity," *Far Eastern Economic Review*, June 3, 1999, p. 27.

91. *Ibid.*

92. "Vietnam Calls Spratly Shooting Regrettable," *Reuters*, January 23, 1998.

In November 1998, the Philippines announced that it would increase naval patrols around the disputed Mischief Reef in the Spratlys area after discovering again China's construction works on that Reef.⁹³ Also in November 1998, China reacted strongly an incident in which a Philippine military reconnaissance jets flew too low over the Chinese occupied Mischief Reef. China warned that the Philippine act might trigger an accidental confrontation. In response to the Chinese protest, Manila ordered its military reconnaissance jets not to fly lower than 5,000 feet over the disputed island.⁹⁴ In January 1999, the Philippines spotted two Chinese missile frigates near the Mischief Reef. After disclosure of the presence of the vessels by the Philippine military, China stopped patrolling the waters near Mischief Reef and pulled out the two frigates in February 1999.⁹⁵ In March 1999, again, Beijing lodged a protest with Manila over a Philippine military reconnaissance flight over Mischief Reef. China charged that the flight had violated a previous agreement which provided that reconnaissance flights should not veer too low over the Chinese structures on the disputed reef.⁹⁶ In response to the Chinese protest, President Estrada of the Philippines said, Philippine air force planes will continue surveillance flights over the disputed Spratly Islands despite Beijing's irritation over the flights.⁹⁷ China continued issuing warnings and asked the Philippines to stop "provocative, hostile and dangerous" low-altitude reconnaissance flights over Mischief Reef.⁹⁸

In July 1999, China's *People's Daily* reported that two Chinese fishing boats were "chased and fired on" by a Philippine gunboat in the waters near the disputed Spratly Islands. One of the boats was then rammed. The other one was detained by the Philippine naval vessel.⁹⁹ In October 1999, the Philippines protested to Vietnam

93. "Philippines Increasing Navy Patrols," *Associated Press*, November 10, 1998.

94. "Mischief Reef: China Warns Philippine Air Force," *Philippine Daily Inquirer*, November 12, 1998.

95. "Mainland Chinese Missile-Firing Frigates Spotted in Mischief Reef," *Central News Agency* (Taiwan), January 18, 1999; "China Pulls Out Frigates from Disputed Territory," *Gulf News*, February 17, 1999.

96. "China's Spratlys Building Boom to Go On," *Philippine Daily Inquirer*, March 24, 1999.

97. "Estrada: PAF Will Continue Surveillance Flights over Mischief," *Philippine Star*, March 26, 1999; "President Defends RP Air Patrol Over Spratlys," *Philippine Daily Inquirer*, March 26, 1999.

98. "South China Sea Tension," *Pittsburgh Post-Gazette*, April 1, 1999.

99. "World: Asia-Pacific Philippines 'Regret' over Spratly sinking," *BBC Online Network*, July 20, 1999, available at <http://news.bbc.co.uk/hi/english/world/asia-pacific/newsid_399000/399027.stm>.

about an incident in which Vietnamese forces stationed on one of the disputed islands in the Spratlys group allegedly fired at a Philippine airforce reconnaissance aircraft that flew over Tennent Reef (Pigeon Reef), a Vietnamese and Philippine claimed island.¹⁰⁰ Later on, it was reported that the cause of the incident was the Vietnamese troops' fear that the Philippine military aircraft was on a bombing run.¹⁰¹ Also in October 1999, two Malaysian Hawk fighters and two Philippine Bronco-type aircraft nearly engaged while flying over a Malaysian-controlled Investigator Shoal in the South China Sea. The incident came amid heightened tensions in the Spratlys area after the Philippines filed a protest against Vietnam after the latter's troops allegedly fired at a Philippine reconnaissance aircraft flying over a Vietnamese-controlled reef.¹⁰² In January 2000, a Chinese military aircraft was spotted hovering over the disputed Scarborough Shoal in the South China Sea by the Philippine military.¹⁰³

E. Military-Buildups of the Claimant Countries

Arms procurements or military-buildups of the claimant countries generate grave concerns among South China Sea littoral countries and non-South China Sea countries regarding the increase of the possibility of territorial disputes being escalated into serious armed conflict and thus have adverse impact on peace and stability in the region. China's efforts to upgrade its naval and air force capabilities, in particular, have generated fear among its neighboring countries in the South China Sea. It is worried that the Chinese military buildup would improve China's ability to wage war into the South China Sea to bolster its sovereignty claims. In response, the littoral countries in the region also allocated more budgets for the procurement of military hardware and equipment. This helped create an uncertain or unstable situation of arms races in the region.

100. "World: Asia-Pacific Philippines Protests at Vietnam Spratly 'Attack'," *BBC Online Network*, October 28, 1999, available at <http://news.bbc.co.uk/hi/english/world/asia-pacific/newsid_491000/491603.stm>. See also "Tensions Rise in Spratlys as Vietnam Fires at Philippine Military Plane," *China News* (Taipei), October 29, 1999, p. 1.

101. "Manila Says Fear of Attack Caused Spratly Incident," *Taiwan News*, October 31, 1999, p. 5.

102. "Malaysian, RP Fighter Planes in Standoff over Spratlys," *Taiwan News*, November 1, 1999, p. 1 and "Malaysia Denies Stand-off in Spratlys," *Taiwan News*, November 2, 1999, p. 4.

103. "Chinese Aircraft Seen Over South China Sea Shoal: Philippines," *Agence France- Presse*, January 23, 2000.

In April 1998, the Russian media reported that China was behind the purchase of the unfinished aircraft carrier *Varyag* from the Ukraine by a Macau tourist company. The report said that the aircraft carrier was likely to be used to carry about 60 Russian-built *Sukhoi-27* jet fighters to project China's military might into the South China Sea where Beijing disputes ownership of the Spratly Islands with its neighboring countries.¹⁰⁴ In November 1998, Congress of the Philippines approved the release of some 7.8 billion pesos to help upgrade the country's military capability as part of its territorial dispute with China over the Spratly Islands and to help deter foreign fishing vessels from encroaching on its waters.¹⁰⁵ In February 1999, the editor of *Jane's Defence Weekly* disclosed that Vietnam had purchased two mini-submarines from North Korea, which were to be deployed in the disputed Spratlys area.¹⁰⁶ In March 1999, *Jane's Navy International* reported that Vietnam purchased two *Tarantul II* (Type 1241 RE) class corvettes. The purchase was believed to upgrade the Vietnamese navy's capability to conduct shore-based operations in coastal waters, as well as operations in the South China Sea, where disputes over claims to the Spratly Islands continued to promote regional instability.¹⁰⁷ In April 1999, the Russian Severnoye Design Bureau indicated that the Chinese navy placed an order for the "Project 956E" type of "Sovremenny"-class destroyer from Russian Federation.¹⁰⁸ Also in April 1999, Foreign Undersecretary Lauro Baja of the Philippines stated that U.S. Pentagon officials informed the Philippine ambassador in Washington that "in five years of time, the Chinese would be projecting even larger naval forces into the Spratlys." He continued, "[t]his being so, Mischief Reef, aside from being a potential air naval base on its own right, would be a key Chinese command and control facility in support of that projection."¹⁰⁹

104. Sergei Blagov, "No Connection to Naval Ship, Says Embassy," *South China Morning Post*, April 4, 1998.

105. "Manila to Speed up Military Upgrading," *The Strait Times*, November 13, 1998.

106. See *Jane's Defence Weekly*, December 9, 1998, p. 14 and; "Vietnam Purchased North Korea's Submarines to be Deployed in the Spratly Islands," *Zhong-kuo-shi-bao* (China Times), February 1, 1999, p. 13 (in Chinese).

107. "Russian Corvettes to Vietnam," *Jane's Navy International*, March 1, 1999, p. 6.

108. "China Sends People to Study the "Sovremenny"-Class Destroyer," *Kanwa News*, April 12, 1999.

109. "Philippines Accuse China of Dominating Sea," *Reuters*, April 18, 1999.

III. THE ASIAN FINANCIAL CRISIS

The Asian economic and financial crisis started in Thailand in summer 1997 and later that year spilled to other East Asian countries, particularly Indonesia, Malaysia, the Philippines and South Korea.¹¹⁰ This crisis had its political and security aspects and had a substantial impact on the security and strategic developments of the Asia-Pacific region. It also had influence on the persisting sovereignty and maritime jurisdictional disputes in the Spratly Islands and the South China Sea.

The effect of Asian financial crisis on the South China Sea territorial disputes focused on three aspects: (1) the defense modernization programs of the claimant countries; (2) the ASEAN's solidarity in dealing with the South China Sea issues; and (3) the maintenance of security and stability in the region.

A. Its Impact on Defense Modernization Programmes of the Claimant Countries

It was believed that all of the littoral countries in the South China Sea with the exception of China, Singapore, and Taiwan, would be scaling down their modernization efforts significantly because of the substantial economic hardships and suffering caused by the financial crisis. As a result of the cutback of arms procurements, the claimant countries' capability to patrol, detect violations, and enforce national claims in the disputed Spratlys area would also be affected.

In a study of the impact of Asian financial crisis on ASEAN states' security, Sheldon W. Simon pointed out that Indonesia suspended the planned purchase from Russia of 12 Su-30 fighters and 8 Mi-17 multipurpose helicopters. Indonesian plans for purchasing additional submarines from Germany was also abandoned.¹¹¹ Thailand encountered the same problem. Its defense budget cutbacks following the country's July 1997 economic crisis led to the suspension of all arms purchases. "Among the procurement plans that have been indefinitely shelved," according to Simon's study, "are the purchase of 295 armored personnel carriers, 8 additional F-18s,

110. For discussion of the origins of the crisis, see Asian Development Bank's *Asian Development Outlook 1998* (Hong Kong: Oxford University Press (China) Ltd., 1998, pp. 19-37.

111. Sheldon W. Simon, "The Economic Crisis and Southeast Asian Security: Changing Priorities," *NBR (National Bureau of Asian Research) Analysis*, Vol. 9, No. 5, December 1998, p. 17.

an AWACS plane, 100,000 new infantry rifles, a satellite to monitor the country's borders, two submarines, light tanks, and long-range artillery."¹¹² Malaysia cut its defense budget by \$83 million (10%) in December 1997 and warned that another 8 percent cut in 1998 was probable. Affected by the financial crisis, Malaysia shelved plans to acquire 27 offshore patrol vessels, helicopters, a low-level air defense system, and new submarines.¹¹³ The acquisition of new weapon systems in the Philippines was also held back because of the financial crisis. The Philippine Air Force cut the requested number of fighters to two batches from an original 12.¹¹⁴ The Philippines signed no arms procurement contracts in 1998 and by mid-1998 its military modernization programme was postponed for at least two more years.¹¹⁵

While member countries of ASEAN experienced substantial military budget cuts during the Asian financial crisis, China continued to upgrade its military capability, mainly through purchasing much advanced military hardware and equipment, as noted above. In 1997, China's People's Liberation Army (PLA) signed approximately \$1 billion worth of contracts for Russian weapons. China's defense budget enjoyed a 10th year of double-digit growth. For the 1998-99 fiscal year, China's military budget increased by 13 percent to \$10.99 billion.¹¹⁶ Most of the increased budget would be spent on navy, air force, and strategic missile forces.¹¹⁷

As a result of slowing down their military modernization efforts and seeing the expansion of China's power in particular in military terms during the period of Asian financial crisis, ASEAN states found it increasingly more difficult to effectively monitor their EEZs and cope with challenges to their respective national territorial and security interests. Indeed, as Simon's study suggested, "[w]ith ASEAN armed forces modernization programs essentially stagnant, there could be serious implications for the protracted disputes among the Spratly Islands claimants, particular

112. *Ibid.*

113. *Ibid.*, p. 18.

114. "Manila Looks to USA for Help over Spratlys," *Jane's Intelligence Review*, August 1999.

115. Sheldon W. Simon, *op. cit.*, p. 20.

116. See an earlier version of Sheldon W. Simon's paper, entitled "The Economic Crisis and SAEAN State's Security, October 23, 1998, available at New York University's website, <<http://www.nyu.edu/globalbeat/asia/Simon102398.html>> (visited 2000/1/26), p. 11.

117. *Ibid.*

with China.”¹¹⁸ The study further argued, “Beijing may be taking advantage of what it perceives to be a period of ASEAN weakness to expand and strengthen its presence in the South China Sea.”¹¹⁹ Coincidentally, Malaya C. Ronas, Director for International Studies, Institute for Strategic and Development Studies of the Philippines, also suggested that the financial crisis had enhanced China’s political standing, giving Beijing the leverage to act more effectively in pursuing its territorial and security interests in the South China Sea.¹²⁰

China’s renovated construction works on the disputed Mischief Reef, in October 1998, can arguably be linked to the Asian financial crisis and support the speculation that China had been taking advantage of regional disorder and economic preoccupations to consolidate its sovereignty claims in the disputed Spratly Islands. In fact, Beijing had done so with remarkably little protest from ASEAN states, with the exception of the Philippine, or from major powers, such as the United States and Japan, which have a vital strategic interest in the sea lines of communications in the South China Sea.

B. Impact on Association of Southeast Asian Nation’s (ASEAN) United Front in Dealing with the South China Sea Issues

In 1992 and 1995 respectively, the ASEAN was able to take a common stand in dealing with the Chinese actions taken in the Spratlys. It adopted the ASEAN Declaration on the South China Sea in 1992¹²¹ and a joint statement on the recent developments in the South China Sea in 1995,¹²² in which the ASEAN foreign ministers, called for peaceful settlement of territorial disputes in the region. ASEAN leaders also pressed China to come to the table and

118. Sheldon W. Simon, *supra* note 111, p. 21.

119. *Ibid.*, p. 28.

120. Malaya C. Ronas, “The Financial Crisis in East Asia: Implications for the Regional and International Agenda,” paper presented at the Second ASEAN-ISIS/IIR Dialogue Conference, entitled “The East Asian Economic Crisis: One Year After,” Convention Center, Asiaworld Plaza Hotel, Taipei, Taiwan, September 30- October 3, 1998, p. 2.

121. For the Declaration, see Joint Communiqué, Twenty-fifth Ministerial Meeting, Manila, July 21-22, 1992, printed in *ASEAN Economic Bulletin*, Vol. 9, No. 2 (November 1992), pp. 235-236.

122. For the Statement by the ASEAN Foreign Ministers on the Recent Developments in the South China Sea, March 18, 1995, visit the ASEAN’s web site at <<http://www.asean.or.id/politics/scs95.htm>>.

solve conflicting claims to the Spratlys. In contrast, during the Asian financial crisis, there was no such solidarity in dealing with the Chinese act since the disclosure of Chinese construction works on the disputed Mischief Reef by the Philippines in November 1998. Manila eagerly looked for support from its fellow member states of ASEAN on the issue, but without avail. At the Sixth ASEAN summit, held in Hanoi on December 1998, ASEAN leaders largely avoided discussions on the South China Sea issues. Why? Because member states of ASEAN "have bigger problems to deal with, particularly the economy," said ASEAN Secretary-General Rodolfo Severino.¹²³

ASEAN states' preoccupation with putting their economic houses in order during the Asian financial crisis was not the only reason for ASEAN's deafening silence on the Chinese move to expand the structures that were built on the disputed Mischief Reef in early 1995. There are two more reasons that can be given to help explain the disruption of ASEAN's strength and unity in dealing with the South China Sea issues. First, actions had indeed been taken by China to alleviate the common fear of ASEAN regarding the Chinese expansionism in the South China Sea. Beginning in April 1997, Beijing agreed to put the South China Sea issue on the agenda of the ASEAN-China Senior Officials Meetings (SOMs). It acknowledged that all maritime states have a legitimate concern about freedom of navigation in the South China Sea and that the exercise of that freedom will be respected. China's former premier Li Peng, when paying a visit to Malaysia in 1997, stated that the South China Sea problems can be left for future generations if multilateral discussions do not resolve the conflicting territorial claims.¹²⁴ In December 1997, a joint statement was issued at the end of the Meeting of the President of the People's Republic of China and the Heads of State/Government of ASEAN, in which China agreed to resolve its differences or disputes with the concerned countries in the South China Sea area through peaceful means, without resorting to the threat or use of force, and to resolve the disputes through friendly consultations and negotiations in accordance with universally recognized international law, including the 1982 LOSC.¹²⁵ Regarding the Chinese construction works on Mischief Reef in October 1998, it was reported that Beijing did inform

123. "'Tis the Season," *Far Eastern Economic Review*, December 24, 1998, p. 18.

124. Lt. General (Ret.) Dato' Seri Haji Mohammad Ali bin Alwi, "Conflicting Claims in the South China Sea," in *Asian Defense Yearbook, 1997-1998*, p. 29.

125. A copy of the statement (in Chinese) is on file with the author.

Manila the Chinese decision to build structures on the reef before it actually did so.¹²⁶

The second reason relates to China's efforts to improve its relations with ASEAN states. During the Asian financial crisis, China decided not to devalue its currency, which was considered very helpful in containing the impact of the crisis and contributing to ASEAN states' economic recovering efforts.¹²⁷ In addition, China contributed US\$1 billion to the International Monetary Fund's rescue package for Thailand — a package to which the United States opted not to contribute outside its IMF commitment.¹²⁸ Moreover, China also made every endeavor to strengthen its relations with ASEAN states through signing bilateral agreements, providing economic assistance, and other friendly moves. In early February 1999, for instance, China signed a broad set of agreements with Thailand, covering matters dealing with defense arrangement, extradition, cooperation, and others.¹²⁹ Also in February 1999, China signed agreements with Cambodia, which included a low-interest, US\$18 million loan for agriculture products, and grants totaling US\$4.8 million.¹³⁰ China also signed a Joint Statement on Framework for Future Bilateral Cooperation with Malaysia and issued a similar joint statement with Vietnam in 1999.¹³¹ These Chinese friendly acts were considered having impact on softening ASEAN's determination to tackle the South China Sea territorial disputes. Ben Dolve and Lorien Holland therefore commented that "China has become, in many Southeast Asian eyes, a source of economic stability during the crisis. And that leaves Southeast Asia more inclined to accommodate it than to antagonize."¹³²

Changes of government in Malaysia and territorial disputes among ASEAN member states, in particular between the Philippines and Vietnam, as well as between the Philippines and Malaysia, are considered other reasons for the disarray of ASEAN's united front in dealing with the South China Sea territorial dis-

126. "Softly, Softly," *Far Eastern Economic Review*, June 10, 1999, p. 28.

127. The statement made by Singapore Prime Minister Goh Chok Tong at a dinner held in Chinese Premier Zhu Rongji's honor in Singapore in late December, 1999. See "China Makes Proposal in Island Fight," *MuziNet Dailynews*, November 29, 1999.

128. "Softly, Softly," *Far Eastern Economic Review*, June 10, 1999, p. 29.

129. *Ibid.*, p. 30.

130. *Ibid.*

131. See Address by Foreign Minister Tang Jiaxuan at China-ASEAN Dialogue, Singapore, July 27, 1999, available in ASEAN's web site at <<http://www.aseansec.org/amm/pmc32dp2.htm>>.

132. *Op.cit.*

putes. The conflicting territorial disputes between the concerned ASEAN states in the Spratlys area had already strained the traditional relations among themselves. ASEAN's solidarity was further disrupted by the Philippine and Singapore's support for the dismissed Malaysian deputy prime minister, Anwar Ibrahim, which made it difficult to improve the "strained relations" between Manila and Kuala Lumpur and unlikely to restore friendly relations between Malaysia and Singapore.¹³³

C. Impact on the Maintenance of Regional Security and Stability

During the Asian financial crisis, there was real concern that the crisis would spread and produce instability, thereby undermining security and stability in the region. Professor Victor Prescott of the University of Melbourne argued that "[a]ny agreement to solve the claims over the Spratlys by several Southeast Asian countries is being put on hold indefinitely because the region is grappling with its worst economic crisis in decades."¹³⁴ The economic hardship confronting Thailand, Indonesia, and to a lesser extent Malaysia and the Philippines, represented a setback to the progress that ASEAN had made in establishing itself as an effective regional forum. During the Asian financial crisis, the ASEAN's capability to moderate tensions in the South China Sea was reduced. Accordingly, regional security and stability suffered from: (1) an erosion of ASEAN's efforts to deal with the South China Sea territorial disputes; (2) the expansion of Chinese military capability; and (3) the increase of Beijing's influence on the ways how the territorial disputes should be dealt with. As a result, as Sheldon W. Simon argued, the Asian financial crisis had affected the balance of power in Southeast Asia in a way that — more than ever — requires the continue U.S. military presence as a stabilizing force in the Western Pacific.¹³⁵ For ASEAN states, in particular the Philippines, reliance on America's military presence increased substantially as a result of the Asian financial crisis. Manila looked to Washington for help not only to balance Beijing's growing influence and dominance in the region, but also to counter China's bold move in the disputed Spratlys area.

133. Michael Richardson, "Asian Tension Outlook: Bright Spots in North, Clouds in South," *International Herald Tribune*, October 20, 1998.

134. "Economic Crisis Puts Spratly Claims on Hold, Says Expert," *The Malaysian National News Agency*, August 24, 1998.

135. Sheldon W. Simon, *supra* note 111, p. 28.

IV. U.S.-PHILIPPINE VISITING FORCE AGREEMENT

As noted earlier, Philippine efforts to upgrade its military capability were held back because of the Asian financial crisis. Even if Manila's economy could begin to recover over the next few years, additional resources for its armed forces are believed to be scarce. As a result, the Philippines started to look to the United States to strengthen its armed forces' operational capabilities and to provide a limited deterrent to counter China's threat in the Spratlys. In the past, the Philippines was hopeful that the United States, under the Mutual Defense Treaty (MDT) signed between Manila and Washington in 1951, would rush to aid of the country if armed conflict break out with China over the Spratly Islands. However, the United States did not feel obligated to aid the Philippines militarily because Washington did not consider the Spratly Islands to be covered by the MDT.

In 1992, the United States completed the withdrawal of its military troops entirely from the Philippines. Nonetheless, military relations between the two countries continued under the MDT; military training, exercises, port calls by U.S. naval vessels, and other military-related activities were held. The U.S.-Philippine military relations suffered a big setback in December 1996 when Washington decided to suspend all port calls by U.S. naval vessels after the Philippine Congress closed a legal loophole that had shielded visiting U.S. military personnel from being prosecuted for crimes committed within the territory of the Philippines. Bilateral military exercises were also cancelled. Since the discovery of the Chinese occupation of Mischief Reef in February 1995, the Philippines has felt much more strongly about the need to increase its military relations with the United States in order to prevent Chinese encroachments in the Spratlys. The thinking was reinforced by the hardships Manila had suffered during the Asian financial crisis, which forced the country to postpone its military modernization efforts.

On February 10, 1998, the Philippines and the United States signed the draft Visiting Forces Agreement (VFA),¹³⁶ which provides for the treatment of U.S. defense personnel stationed temporarily in the Philippines in case they commit a crime.¹³⁷ The absence

136. For the Agreement between the Government of the United States and the Government of the Republic of Philippines regarding the Treatment of United States Armed Forces Visiting the Philippines, visit the United States Information - Manila web site at <<http://www.usia.gov/abtusia/posts/RP1/www1025.html>>.

137. "Philippines, U.S. Sign accord on Joint Military Exercises," *Agence France-Presse*, February 10, 1998.

of such an agreement had prevented American military forces from conducting military exercises or port calls of U.S. naval vessels in the Philippines despite a mutual defense treaty between the two countries. In August 1998, the United States pushed the Philippines to ratify the VFA, indicating that the agreement would open the way for resumption of large-scale joint military exercises and visits by U.S. naval vessels.¹³⁸ While the ratification of the VFA by the Philippine Senate was still pending, joint naval drills between Manila and Washington were conducted, not within the territory of the Philippines, but in international waters, reported some 25 nautical miles (46.3 km) west of Manila Bay.¹³⁹ On May 27, 1999, the Philippine Senate finally ratified the VFA, which was claimed as Manila's "most potent weapon to deter China's 'aggression' in the South China Sea."¹⁴⁰ In July 1999, the U.S.S. *Blue Ridge*, the command ship of the U.S. Seventh fleet, arrived in Manila for the first time since 1996 when joint military exercises and port calls of U.S. warships were suspended.¹⁴¹

The entrance into force of the VFA has created three policy challenges for the United States. First of all, the Philippines has been taking a position that the United States has a role to play in helping settle the disputes in the Spratlys area between the Philippines and China and four other claimant countries. Manila has persistently advocated that the U.S.-Philippine MDT allows both countries to seek each other's assistance in case of attack on their respective territories, which include the Spratly Islands on the Philippine side. It also believes that the VFA would help maintain a balance of power and avoid a power vacuum in Southeast Asia. The United States, however, has been trying to draw a line between the MDT and the VFA. In March 1999, Admiral Denis Blair, chief of the U.S. Pacific Command, stated in a defense conference held in Singapore that the VFA is "not a big signal or a change to [U.S.] strategy. We've been working on it for years now. I would not put a lot of other significance to it."¹⁴² About two months later, he com-

138. "U.S. Pushes Manila on Military Pact New Agreement Would Allow Joint Exercises and Visits by Warships," *International Herald Tribune*, August 4, 1998.

139. "Estra Kept in Dark about Naval Exercises," *The Strait Times* (Singapore), August 8, 1998, p. 30.

140. "Philippine Senate Ratified Military Training Accord with US," *Agence France-Presse*, May 27, 1999.

141. "U.S. Navy Back in Philippines after New Pact," *Muzi Lateline News*, July 22, 1999.

142. "Philippines to allow U.S. Troop Exercise," *The Asian Wall Street Journal*, May 28, 1999.

mented on the VFA again in a Singapore forum, saying that the agreement "is not a security guarantee" for the Philippines.¹⁴³ President Estrada, Defense Secretary Orlando Mercado, and Foreign Affairs Secretary Domingo Siazon all agreed with the remarks of U.S. Admiral Blair that the VFA does not give Manila a security guarantee in the dispute over the Spratly Islands. But under the MDT, they argued, the United States should "automatically" come to the aid of the Philippines in case of external attack.¹⁴⁴ The United States disagreed. Washington did not feel obligated to aid the Philippines militarily under the MDT, mainly because the Spratly Islands are not covered by the 1951 treaty.¹⁴⁵

Secondly, China has expressed its strong opposition against the holding of joint U.S.-Philippine military exercises near the disputed Spratly Islands.¹⁴⁶ Beijing also urged that the said joint U.S.-Philippine military exercises should not be conducted for the purpose of targeting other countries. Thirdly, it remains to be seen regarding to what extent would the resumption of joint U.S.-Philippine military exercises or the strengthen of the bilateral military relations between Washington and Manila check China's intention to establish a strong military presence and take aggressive actions in the South China Sea.

V. CONTINUOUS REGIONAL EFFORTS TO FIND SOLUTIONS TO THE SOUTH CHINA SEA TERRITORIAL DISPUTES

Despite all kind of political, economic, social and other difficulties experienced by most of the countries in Southeast Asia during the 1997-98 Asian financial crisis and the year after, the South China Sea issues, either formally or informally, had continually been discussed at regional fora, in particular, the ASEAN, ARF, CSCAP, and the Indonesian-sponsored informal Workshop on Managing Potential Conflicts in the South China Sea. In the past, China strenuously opposed the discussion of the South China Sea

143. "My Cup of Tea: Rethinking the VFA," *BusinessWorld* (Philippines), May 26, 1999, p. 4.

144. "Anti-VFA Gains 2 Votes," *Manila Times*, May 25, 1999; "VFA Agreement Will Not Help Philippines in Spratly Row," *Central News Agency* (Taiwan), February 7, 1999.

145. "Manila Looks to USA for Help over Spratlys," *Janes's Intelligence Review*, August 1999.

146. "China Cautions against Philippine-US War Games near Spratlys," *Agence France-Presse*, August 3, 1999.

issues at the ASEAN summit, ASEAN-China senior officials meetings, and ARF meetings. But, as noted in the last section, China's insistence on bilateral discussions of the Spratlys disputes between the concerned claimant countries directly had been softened during the Asian financial crisis by one of its foreign policy concerns, that is, improving Beijing's relations with the ASEAN states. Since then, it has been seen that China is willing to have a broader dialogue on South China Sea issues. For instance, Tang Jiaxuan, China's foreign minister, stated at the 5th ARF ministerial meeting that "China will, . . . participate in the multi-tiered and multi-channeled dialogues and cooperation in the security field of the Asia-Pacific region."¹⁴⁷ This change of Chinese attitude was considered positive and helpful, given the fact that a number of different claims to the islands in the South China Sea need at least to be discussed at regional multi-lateral fora. More importantly, the discussion or exchange of views on the South China Sea issues at regional fora had been considered useful CBMs and thus encouraged to carry on. A brief account of how the South China Sea issued had been dealt with at the ASEAN, ARF, CSCAP, and the South China Sea Workshop in 1998 and 1999 is therefore provided below.

A. The ASEAN Meetings

On December 16, 1998, one month after the disclosure of Chinese expansion of buildings on Mischief Islands by the Philippines, the 6th ASEAN Summit was held in Hanoi, Vietnam. Despite Manila's efforts to move for strong ASEAN actions on the South China Sea issues, the ASEAN Summit did not discuss the recent Chinese act and other recent developments in the Spratlys area.¹⁴⁸ Malaysia, one of the claimant countries to the Spratly Islands, opposed the Philippine proposal to discuss the South China Sea issues, saying that ASEAN is not the proper forum.

Although there were no discussions at the 6th summit, the ASEAN heads of states declared, *inter alia*, that

We shall promote efforts to settle disputes in the South China Sea by peaceful means in accordance with international law, including the 1982 United Nations Convention

147. For Address by H.E. Mr. Tang Jiaxuan, Minister of Foreign Affairs of the People's Republic of China at the 5th ARF Ministerial Meeting, Manila, 27 July 1998, available in ASEAN's web site at: <<http://www.asean.or.id/amm/arf3losp.htm>>.

148. Ben Barber, "New Pact with Thais Troubles U.S. Allies," *The Washington Times*, February 23, 1999, p. A1.

on the Law of the Sea, and in the spirit of the 1992 ASEAN Declaration on the South China Sea. We call on all parties concerned to exercise restraint and to refrain from taking actions that are inimical to the peace, security and stability of Southeast Asia and the Asia-Pacific region.¹⁴⁹

At the 31st ASEAN Ministerial Meeting, held in Manila, July 24-25, 1998, the ASEAN foreign ministers reviewed the developments in the South China Sea. They welcomed the Joint Statement issued at the ASEAN-China Summit in Kuala Lumpur in December 1997. They also called on all parties concerned to exercise self-restraint and to continue efforts to find solutions for the territorial disputes on the basis of international law, particularly, the 1982 LOSC, and to adhere to the principles embodied in the 1992 ASEAN Declaration on the South China Sea. The concerned countries were urged to focus on CBMs with a view to enhancing peace and stability in the region. The foreign ministers took notes the discussions in the bilateral consultations among countries concerned at the ASEAN-China Senior Officials Consultations and at the AFR, in particular in the Inter-sessional Group on CBMs. Finally, they also noted the positive contribution made by the Indonesian-sponsored informal workshops on managing potential conflicts in the South China Sea.¹⁵⁰ A similar statement was made at 32nd ASEAN Ministerial Meeting, held in Singapore, July 23-24, 1999.¹⁵¹ On November 26, 1999, the foreign ministers, economic ministers, and finance minister of the ASEAN member states met together for the first time on the eve of the 3rd ASEAN Informal Summit. The ministers exchanged views on regional and international issues, including the South China Sea territorial disputes. They recognized the need to engage key players on matters of political and security concerns. They also noted that ASEAN has drafted a code of conduct

149. See paragraph 30 of the Hanoi Declaration of 1998, issued at the end of the 6th ASEAN Summit. For the Declaration, visit ASEAN's web site at <http://www.aseansec.org/summit/6th/prg_hdec.htm>.

150. See paragraph 15 of the Joint Communique of the Thirty-First ASEAN Ministerial Meeting held in Manila, Philippines, July 24-25, 1998. The communique is available at <<http://www.aseansec.org/politics/pramm31.htm>>.

151. See paragraph 39 of the Joint Communique of the Thirty-Second ASEAN Ministerial Meeting held in Singapore, July 23-24, 1999. The communique is available at <<http://www.aseansec.org/politics/pramm32.htm>>.

on the South China Sea¹⁵² to contribute to peace and stability in the region.¹⁵³

B. The ASEAN Regional Forum

The ASEAN Regional Forum has been considered one of the useful fora in promoting security dialogue and cooperation and building confidence among countries in South Asia and the Asia-Pacific region. The objectives of the ARF are two-fold:

- to foster constructive dialogue and consultation on political and security issues of common interest and concern; and
- to make significant contributions to efforts towards confidence-building and preventive diplomacy in the Asia-Pacific region.¹⁵⁴

The progress this forum had made since its inauguration on July 25, 1994 in Bangkok, Thailand had been recognized by the participating countries, including China. At the 5th ARF meeting, Tang Jiaxuan, the Chinese foreign minister, stated that

the ARF has made active exploration centering on confidence-building and achieved remarkable and concrete results. The ARF spirit and approach have been fostered, namely equal participation, consensus-making, seeking common ground while shelving differences and incremental progress. This is attributable to political commitments and active involvement of ARF participants and more importantly, to the leadership and organization of ASEAN. The Chinese side highly appreciates it and support ASEAN in continuing to be the driving force.¹⁵⁵

Australia, another participating country, also argued in September 1995 that “while it was too early in the development of the ARF for it to be able to play a role in resolving South China Sea issues, it should not shy away from discussing them in light of events [re. Chinese occupation of and construction works on the disputed Mis-

152. This effort will be discussed *infra*.

153. See paragraph 16 of the press statement of the Chairman of the ASEAN Special Joint Ministerial Meeting held in Manila on November 26, 1999. The statement is available at <http://www.aseansec.org/summit/inf3rd/ps_sjmm.htm>.

154. These two objectives were outlined in paragraph 4 of the First ARF Chairman’s Statement in July 1994. For the statement, visit home page of Australia’s Department of Foreign Affairs and Trade at <<http://www.dfat.gov.au/arf/arf1.html>>.

155. For the statement, see *supra* note 147.

chief Reef in the Spratlys] this year.”¹⁵⁶ Australia, accordingly, gave its support for the exchange of views on the South China Sea issues at the ARF meetings because “it showed that the ARF was capable of discussing even sensitive issues in a meaningful and constructive way.”¹⁵⁷

Since 1995, the question of the South China Sea has indeed continuously been a subject on the annual ministerial meetings of ARF, even if it has not always been in the meetings’ formal agendas.¹⁵⁸ At the 5th meeting of the ARF, held in Manila, Philippines on July 27, 1998, the participating foreign ministers

Welcomed the commitment of all the countries concerned to the peaceful settlement of the dispute on the South China Sea, in accordance with the recognized principles of international law, including the UNCLOS. The Ministers expressed satisfaction on the continued exercise of self-restraint by all the countries concerned and noted that positive contributions made by the bilateral consultations between the countries concerned, the dialogue in the ASEAN-China Senior Officials Consultations, the regular exchange of views in the ARF, and the continuing works of the Informal Workshop on Managing Potential Conflicts in the South China Sea.¹⁵⁹

A similar expression was incorporated into the chairman’s statement of the sixth meeting of the ARF held in Singapore on July 26, 1999.¹⁶⁰ More importantly, however, the meeting also discussed the idea of establishing a “good offices” role for the ARF Chair, so that ARF members to a dispute could call on the Chair for assistance.¹⁶¹

156. See “ASEAN Regional Forum Wins Stronger Role,” a summary report prepared by the Department of Foreign Affairs and Trade, Australia in September 1995, available on the Department’s home page at <http://www.dfat.gov.au/isecurity/pd/pd_sept_95/peace7.html>.

157. *Ibid.*

158. For the topics discussed during the ARF meeting 1994-1998, visit ASEAN’s web site at <<http://www.asean.or.id/amm/toparf.htm>>.

159. See paragraph 15 of the Chairman’s Statement of the Fifth Meeting of the ARF. For the statement, visit ASEAN’s web site at <http://www.asean.or.id/politics/pol_arf5.htm>.

160. See paragraph 11 of the Chairman’s Statement of the Sixth Meeting of the ARF. For the statement, visit ASEAN’s web site at <http://www.asean.or.id/politics/pol_arf6.htm>.

161. The discussion of this idea was not written in the Chairman’s Statement for the meeting. But it was mentioned in U.S. Secretary of State Albright’s Intervention at the Sixth ARF meeting on July 26, 1999. For the text of the secretary’s intervention, visit

It also discussed the future direction of the ARF process which can be helpful for managing or settling the South China Sea territorial disputes. The participating foreign ministers confirmed that "the ARF is a framework for political and security dialogues and cooperation in the region and that its discussions and activities should be focused on issues which would have significant impact on regional security."¹⁶²

In additional to the ARF foreign ministerial meetings, the South China Sea issues had also been discussed at the ARF-related meetings such as the meetings of the ARF Intersessional Support Group on Confidence Building Measures (ISG on CBMs) and ARF ISG Meeting of Maritime Specialist Officials.¹⁶³ The ISG-CBM has served as an effective forum in Southeast Asia and the Asia-Pacific region for frank, open and constructive dialogue on the regional security environment, for the exchange of information and for the undertaking of cooperative activities aimed at promoting trust and confidence among participating countries. In 1998, the ARF ISG-CBM began to explore cooperation in the area of maritime safety, law and order at sea and protection and preservation of the marine environment. In early March 1999, for instance, the issue of the South China Sea dominated discussion during the exchange of views on regional security perceptions at the meetings of the ARF ISG on CSBMs, held in Bangkok, Thailand. The Intersessional Support Group at that meeting,

welcomed the commitments of all the countries concerned to the peaceful settlement of the dispute on the South China Sea, in accordance with recognized principles of international law, including the UNCLOS. The ISG further noted the bilateral consultations between the countries concerned, the dialogue in the ASEAN China Senior Officials Consultations and in the as well as the continuing work of the Informal Workshop on Managing Potential Conflict in the South China Sea. . . . The ISG took note of different views expressed and expressed the hope that a meeting of experts on confidence measures between China and the Philippines and the ASEAN-China SOM

U.S. Department of State's home page at <<http://secretary.state.gov/www/statements/1999/990726.html>>.

162. See paragraph 21 of the Chairman's Statement, *supra* note 160.

163. For ARF meetings and activities (1994-99), visit home page of Australia's Department of Foreign Affairs and Trade at <http://www.dfat.gov.au/arf/arf_meet.html>.

will result in mutual understanding and constructive dialogue.¹⁶⁴

There was also a brief exchange of views on the South China Sea at the ARF ISG Meeting of Maritime Specialist Officials, held in Honolulu in early November 1998.¹⁶⁵

C. The Council for Security Cooperation in the Asia Pacific

As noted in earlier chapters, the Council for Security Cooperation in the Asia Pacific was established in Kuala Lumpur in July 1993 as a forum for non-governmental "Track II" multilateral security dialogue. This dialogue process also deals with South China Sea issues. For instance, in the ARF Track Two Conference on Preventive Diplomacy, held in Singapore in September 1997, the participants exchanged views on the prospects for future efforts in confidence building and preventive diplomacy in Southeast Asia, and focused in particular on the South China Sea and Cambodia. The participants took note of the continuing efforts of regional preventive diplomacy in addressing the South China Sea territorial disputes through norm-building. They also acknowledged the Indonesian-sponsored informal workshop on the South China Sea.¹⁶⁶

In 1998 and 1999, a number of working groups meetings on CSBMs,¹⁶⁷ Comprehensive and Cooperative Security,¹⁶⁸ Maritime

164. See paragraph 27 of Co-Chairmen's Summary Report of the Meetings of the ARF Intersessional Support Group on Confidence Building Measures held in Honolulu, USA, November 4-6, 1998, and in Bangkok, Thailand, March 3-5, 1999, available at ASEAN's web site at <<http://www.aseansec.org/politics/arf6a.htm>>.

165. See Report on the 1998-1999 Meetings of the ARF ISG on CSBMs, available in home page of Australia's Department of Foreign Affairs and Trade at <http://www.dfat.gov.au/arf/arf5_C.html>.

166. See the Co-chairmen's Report on Track Two Conference on Preventive Diplomacy, held on September 9-11, 1997. The report can be found in home page of Australia's Department of Foreign Affairs and Trade at <http://www.dfat.gov.au/arf/arf_track2.html>.

167. CSCAP 8th, 9th and 10th Meeting of the International Working Group on Confidence and Security Building Measures were held in Washington, D.C. USA in early May 1998; in Manila, Philippines in mid-December 1998; and in Seoul, South Korea in late May 1999, respectively.

168. CSCAP 5th Meeting of the International Working Group on Comprehensive and Cooperative Security was held in Wellington, New Zealand in mid-July 1998 and the 6th meeting in Beijing, China in late May 1999.

Cooperation,¹⁶⁹ and Transnational Crimes¹⁷⁰ had been held. In these working groups meetings, South China Sea issues were touched upon, though not on a regular basis and only through a brief exchange of views. For instance, at the CSCAP Workshop on Preventive Diplomacy, held in Bangkok, Thailand in early 1999, the participants reviewed the various steps that the ARF might consider as it prepares to enter into the second stage of implementation and takes on a preventive diplomacy role. The steps would be built upon the suggestions contained in the 1995 ARF Concept Paper regarding ways to proceed with preventive diplomacy, which include:

- developing a set of guidelines for the peaceful settlement of disputes;
- seeking the endorsement by other countries of the 1992 ASEAN Declaration on the South China Sea;
- exploring new ways of preventing conflicts (including fact finding mission by 'Special Representatives'); and
- exploring the idea of establishing a Regional Risk Reduction Centre.¹⁷¹

D. The South China Sea Workshop

This workshop is the only regular South China Sea forum in existence in the region. The workshop is held mainly for the purpose of promoting greater understanding and cooperation in order to reduce the prospects of conflict in the South China Sea. As noted in Chapter I of this study, a total of ten workshops and around 28 technical working groups (TWG), group of experts (GE), study group, and other relevant meetings on legal matters, marine scientific research, marine environmental protection, safety of navigation, shipping and communications, and resources assessment and development in the South China Sea had been convened within the workshop dialogue process between 1990 and 1999. Issues raised at the TWG or GE meetings are then re-circulated back to the annual

169. CSCAP 5th, 6th, and 7th Meeting of the Working Group on Maritime Cooperation was held in Kuala Lumpur, Malaysia, in mid-November 1998; in Hanoi, Vietnam in late August 1999; and in Wollongong, Australia in early November 1999, respectively.

170. CSCAP Third, Fourth, Fifth, and Sixth Working Group Meeting on Transnational Crime was held in Manila on May 23-24, 1998; in Sydney October 11-13, 1998; in Bangkok between May 23-25, 1999; and in Wollongong on November 6-9, 1999, respectively.

171. For the summary report of the Workshop, visit CSCAP's home page at <<http://www.cscap.org>>.

workshop plenary meeting for discussion and adoption. The SCS Workshop participants attend in their own private capacity and are drawn from governments, particularly ministries of foreign affairs and defense, diplomatic circle, academic and research institutions.

In addition to the Workshop, which was held annually in different cities of Indonesia since 1990, TWG meetings and GEMs on topics in relation to marine scientific research, marine environmental protection, legal matters, safety of navigation, shipping and communications, and resources assessments and others had also been held in countries of the South China Sea region, with the exception of Taiwan. By the end of 1998, 10 workshops 14 TWG meetings, 8 GEMs, and 2 study group meeting or training programmes had been held. More than US\$3 million of Canadian funds and a substantial sum on the part the South China Sea region had been spent.¹⁷²

The Ninth South China Sea Workshop was held at Ancol, Jakarta December 1-3, 1998. The Indonesian Minister for Foreign Affairs expressed his hope at the opening of the workshop that, despite the financial and economic crisis experienced by some countries in the South China Sea region, the SCS Workshop process should continue to move purposefully and effectively towards the implementation of the agreed co-operative projects. In addition, the Minister suggested that the SCS Workshop should expand the scope of its work to meet the need for more CBMs.¹⁷³ During the background discussions, resource person Ian Townsend-Gault informed the participants that budgetary consideration should not be a problem of concern when making recommendations with regard to convening technical working group meetings or group of experts meetings, because the SCS Workshop process had enough money for the year 1999. "If it is a good idea to help move forward the Workshop process," Townsend-Gault suggested, "a decision should be made to convene a TWG meeting or a GEM" in 1999.¹⁷⁴

Participants at the Ninth SCS Workshop agreed to seek the co-operation of the Coordinating Committee for Coastal and Offshore Geoscience Programme in East and Southeast Asia (CCOP) to organize two meetings: the first one would be to compile data on non-

172. Ian Townsend-Gault, "Preventive Diplomacy and Pro-Activity in the South China Sea," *Contemporary Southeast Asia*, Vol. 20, No. 2, 1998, p. 185.

173. Address by H.E. Mr. Ali Alatas, Minister for Foreign Affairs, Indonesia, at the Opening of the Ninth Workshop on Managing Potential Conflicts in the South China Sea, Ancol, Jakarta, 1 December 1998.

174. The author's notes taken at the meeting.

hydrocarbon mineral resources in the South China Sea; the second one would be to establish a data base to hold this information. The participants also agreed to convene the following meetings in the year 1999: a second meeting of the study group on the zone of co-operation; a group of experts meeting on law enforcement and illegal acts at sea; a group of experts meeting on environmental legislation; the fourth technical working group meeting on legal matters in the South China Sea; a third group of experts meeting on hydrographic data and information exchange; a drafting group meeting for marine environmental protection proposal on training programme for ecosystem monitoring; a small meeting to initiate activities under the Biodiversity Project in conjunction with the group of experts meeting on biodiversity; a group of experts meeting on search and rescue; and the Tenth SCS Workshop. In addition, the participants agreed to recommend to their respective authorities to consider ratification of the following international treaties: (1) the Rome Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988; (2) the International Convention on Civil Liability for Oil Pollution Damage, 1992; (3) the International Convention on the Establishment of International Fund for Compensation for Oil Pollution Damage, 1992; and (4) the International Convention on Oil Spill Pollution and Preparedness, Response and Co-operation, 1990. In order to further the SCS Workshop process, the participants were encouraged to report to the Workshop as to how their respective authorities are implementing the agreed co-operative projects. The participants also agreed to request that their respective authorities specify or quantify their stated support and contribution for the agreed projects and programmes for co-operation.

During the discussions at the Ninth SCS Workshop, there were four major contentious issues which are worth mentioning. The first one is related to the decision to invite resource person Dr. John Pernetta, a senior programme officer of International Waters, United Nations Environment Programme's Global Environmental Facility Co-ordination Office, to give a presentation on the work and activities of the East Asian Seas Regional Coordinating Unit (EAS/RCU). One participant from China vigorously opposed the organizing committee's inviting Dr. Pernetta as a resource person to the Workshop. The participant expressed his view that "No one has the right to extend the resource persons to outsiders without the agreement from the participants of the Workshop. UNEP is an organ of the United Nations; and therefore it should not have for-

mal relationship with this Workshop." The participant further stated that if the UNEP is interested in the projects adopted by the Workshop, it should address its interest to the country concerned. The Chinese participant's statement was consistent with Beijing's official position regarding Chinese participation in the SCS Workshop process, that is, the meetings should be informal.¹⁷⁵

In response to the accusation, Dr. Hasjim Djalal, one of the key figures in charge of organizing the workshop, stated that invitation of resource persons has actually been the function of the organizer of the Workshop. This function has never been questioned by the participants of the Workshop. Besides, it is very difficult to consult every participant for the invitation of resource persons. In addition, he reminded the participant that he was authorized by the Workshop to look for support from outside the region. In short, Dr. Djalal considered it appropriate to invite UNEP officer to the Workshop. The participant from China was not satisfied with Hasjim Djalal's reply. He did not think Hasjim Djalal, nor resource persons from Canada, have the authority to decide to invite anybody from any part of the world. The participant from China urged: "keep this meeting informal, since the Workshop is an informal meeting."¹⁷⁶

The second major contentious issue is the implementation of the agreed co-operative projects. Participants from Indonesia in particular were keen to see an early implementation of the proposed projects. However, participants from other countries, such as China, Vietnam, Malaysia, and Taiwan took a different view. One of the participants from Taiwan expressed his views that not all of the agreed projects should be implemented rapidly, since some of the agreed projects, due to their involvement in sensitive sovereignty or jurisdictional matters, need to be considered more carefully by the respective authorities. One of the Chinese participants expressed his support for the caveat raised by the Taiwanese participant. The implementation of the agreed projects has been seen as the major indicator of the Workshop's progress. As mentioned earlier, for the SCS Workshop to avoid the "talking club" fate, it is necessary to see the agreed projects implemented soon. Nevertheless, the participants in the workshop process were dancing in different tune and speed. While some participants preferred several

175. Hasjim Djalal, "Territorial Disputes at Sea: Situation, Possibilities, Prognosis," paper presented at the Tenth Asia-Pacific Roundtable, June 5-8, 1996, Institute for International and Strategic Studies, Kuala Lumpur, p. 4.

176. The author's notes taken at the meeting.

steps forward, others preferred staying at the same place, or even preferred stepping backward. The third major issue discussed at the Workshop has something to do with the drafting of a code of conduct for the entire South China Sea region, which will be discussed in detail in next section.

The last contentious issue relates to the willingness of Taiwan to host either a TWG meeting, a GEM, or a study group meeting. It is true that all participating authorities except Taiwan had hosted at least one meeting in the SCS Workshop process in the period from 1990 to 1998. Although participants from Taiwan reiterated their willingness to host project meetings, their offer had not been accepted by the organizer, mainly because of China's opposition. The participants from Taiwan offered again to host a future meeting at the Ninth SCS Workshop, but with no positive results.

The Tenth SCS Workshop was held in Bogor, West Java, Indonesia December 5-8, 1999, and discussed the work of the SCS Workshop process in 1999 and set priorities for activities in 2000. The workshop was opened by the new foreign minister of Indonesia, Alwi Shihab, who encouraged all participants to pursue the active implementation of the agreed projects and reiterated the need to promote stability, dialogue and cooperation in the South China Sea area. Hasjim Djalal outlined the progress of the SCS Workshop series in the last ten years, in which he assessed the achievements of the workshop series by examining to what extent the three workshop's objectives had been accomplished: (1) to promote confidence building measures, (2) to develop dialogue, and (3) to promote concrete cooperation in the South China Sea. The following are the achievements of the workshop series identified by Hasjim Djalal:

- Through participation in the workshop series, a growing sense of "community" among the participants has evolved;
- Better relations and dialogue between participants of the workshop have been fostered;
- More and more networking are developing amongst South China Sea officials of various disciplines in personal capacity;
- Through regular dialogue and exchange of information, the participants have developed a better understanding of each other's position;
- Extra-regional actors — "outsiders" — have appreciated the work of the workshop series as the most impor-

tant informal regional forum dealing with the South China Sea;

- Without design and a plan, we were able to develop and evolve an informal structure of cooperation, through the mechanisms of the workshop series, the technical working groups (TWGs) and the group of experts meeting (GEMs);
- Through the years, the workshop series [have] been able to select, identify and design concrete cooperative program;
- The Workshop series, earlier on, was able to agree on certain basic principles to manage potential conflicts: cooperation, non-use of force, peaceful negotiations, dialogue, [and] self restraint; and
- The Workshops were able to indirectly contribute a model of cooperation to other various fora, [such as] ASEAN-China dialogue, etc.¹⁷⁷

Despite these achievements, Djalal argued that the South China Sea workshop process also has encountered a number of problems which await resolution. The first problem is that the nature of the workshop has always been informal, which made it very difficult or nearly impossible for the workshop itself to make decisions. Instead only recommendations are made to the respective authorities of the participants regarding what measures can be taken to help manage potential conflicts or to enhance cooperation in the South China Sea. In fact, the linkage between the Workshop and the participants' governments has been very weak. The second problem was caused by some suspicion among participants themselves, which made it difficult to formulate or to implement the agreed projects. The third problem relates to suspicion toward the role of non-South China Sea actors, making it very difficult for them to participate in the process and then help the endeavour of the workshop. The fourth problem is the ability of the workshop participants to de-link territorial and sovereignty issues and the technical cooperation issues. Because the Workshop failed to de-link the two sets of issues mentioned above, it created the fifth problem for the workshop process. That is, no sufficient progress had been made on reaching understanding on the South China Sea territorial disputes. The

177. See Comments by Ambassador Hasjim Djalal on the Progress of the Workshop Series in the Last 10 Years, presented at the Tenth Workshop on Management Potential Conflicts in the South China Sea, Bogor, December 6, 1999, p. 2. (A copy of the paper on file with the author.)

sixth problem is the existence of the legitimated interests of the non-South China Sea states, such as the United States, Japan, Korea, and Australia, in South China Sea issues. It became more difficult to deny the right of these non-South China Sea states to participate in and contribute to efforts in finding solutions to the territorial disputes in the area, since they do have interests in and are concerned about navigation safety, shipping and communications, marine environment, marine scientific research, and other relevant issues in the South China Sea. The lack of knowledge on the technical issues and uncertain interpretation on certain provisions of the 1982 LOSC are also problems found in the workshop process.¹⁷⁸

The participants of the Tenth South China Sea Workshop called for renewed efforts to secure support for and the continued implementation of the agreed co-operative projects, in particular, on Biodiversity, Sea-level and Tide Monitoring, Information and Networking, Marine Ecosystem Monitoring, and the preparation of the Geoscience Database in the South China Sea.¹⁷⁹ The participants also requested the Center for Southeast Asian Studies to prepare a study of international practice in establishing principles or regional co-operation for the protection and preservation of the marine environment, and to consider their relevance to the South China Sea area.¹⁸⁰ A number of TWG meetings, Group of Experts meetings, the 11th SCS Workshop, and other relevant meetings were agreed upon by the participants to be convened in 2000.¹⁸¹ The participants also noted and expressed support for the efforts of another forum (ASEAN-China Dialogue) to develop a code of conduct for the South China Sea region, and agreed to continue exchanging views on a code of conduct in the SCS Workshop.¹⁸²

It should be noted again that the U.S. has continuously expressed its support for the SCS Workshop process since its inception in 1990. The American scholars, such as Mark J. Valencia of Hawaii's East-West Center and Jon Van Dyke of School of Law, University of Hawaii also had been invited to participate in the Workshop process as resource persons.

178. *Ibid.*

179. See paragraph 17(a) of the Statement of the Tenth Workshop on Managing Potential Conflicts in the South China Sea, held at Bogor, West Java, Indonesia, December 5-8, 1999. (A copy of the statement on file with the author.)

180. *Ibid.*, paragraph 17(b).

181. *Ibid.*, paragraph 18.

182. *Ibid.*, paragraph 13.

VI. DEVELOPMENTS OF CONFIDENCE BUILDING MEASURES IN THE SOUTH CHINA SEA AREA

Between 1998 and 1999, there had been a number of bilateral or multilateral CBMs, either proposed or adopted by the countries in the South China Sea area, which were considered positive developments and welcomed by both the claimant and non-claimant countries. These CBMs are tools that the claimant countries in the South China Sea can use to reduce tensions and avert the possibility of serious armed conflicts. Naturally, the U.S. government also welcomes the adoption of the CBMs discussed below and encourages the claimant countries to adopt similar CBMs to help lower tensions in the Spratly Islands and the South China Sea.

A. Confidence Building Measures Proposed, Discussed or Adopted by the Claimant Countries

The proposed, discussed or adopted CBMs in the South China Sea reported in the two-year-period 1998 - 1999 include: (1) the agreement to aggrandize defense cooperation between the claimant countries, (2) the proposal for joint use of the facilities built on the disputed islands, (3) the agreement to hold sport activities on the disputed islands, (4) the agreement to joint search and rescue operations in the disputed waters, (5) the establishment of experts group on CBMs between the claimant countries, (6) the signing of border agreement between the claimant countries, and (7) the announcement of withdrawal of marines stationed in the disputed islands. The following is a sample of the reported CBMs found in the South China Sea for the purpose of demonstrating that there also had had positive external policy-input variables that entered into the U.S. policy-making process in relation to the sovereignty and maritime jurisdictional disputes in the South China Sea.

In April 1999, Defense Secretary Orlando Mercado of the Philippines and China's ambassador in Manila Fu Ying met to discuss the need for the two countries to develop a military relationship. It was reported that the Chinese ambassador agreed that "confidence building measures are necessary to stabilize things" between Beijing and Manila, which have been at odds over China's construction works on the disputed Mischief Reef.¹⁸³ In June 1999, China and Malaysia agreed to increase defense cooperation and use peaceful

183. "RP Eyes Military Ties with China," *The Philippine Star*, April 29, 1999.

means to settle territorial disputes in the South China Sea.¹⁸⁴ In April 1999, it was announced by Manila that Vietnamese and Philippine troops stationed in disputed Spratly Islands would play a series of football matches as a CBM on the Philippine controlled island Pag-asa. The Philippines also proposed a joint search and rescue and medical emergency assistance arrangement between the Vietnamese and the Philippine troops garrisoned in the Spratly Islands.¹⁸⁵ The Chinese and Malaysian troops were also invited to the proposed football games by the Philippines. It was reported that Malaysia had expressed interest in playing soccer matches on the disputed Spratly Islands.¹⁸⁶ In August 1999, Foreign Secretary Domingo Siazon said that his country supported a Chinese proposal to conduct joint naval patrols against piracy and drug smuggling in the South China Sea.¹⁸⁷

A series of talks between China and Vietnam had been held in 1998 and 1999 to fix their boundaries in the land border area and the Gulf of Tonkin. On December 30, 1999, Beijing and Hanoi finally signed a long-awaited land border agreement. The two countries would focus on resolving maritime boundaries in the Tonkin Gulf in 2000, and then sovereignty and maritime jurisdiction disputes in the Paracel and Spratly Islands in the future.¹⁸⁸

In November 1998, China's foreign minister Tang Jiaxuan and the Philippine Foreign Affairs Secretary Domingo Siazon met in Kuala Lumpur. During the meeting, the foreign ministers agreed to set up an experts group to discuss CBMs in the disputed Spratly Islands, which was held in March 1999.¹⁸⁹ Manila and Beijing agreed to exercise restraint and not make moves that could lead to

184. "China — Signs Defense Agreement with Malaysia," *Periscope-Daily Defense News Capsules*, June 3, 1999.

185. "Philippines, Vietnam Troops to Play Football in Disputed Islands," *Agence France-Presse*, April 5, 1999.

186. "Islands in the Stream," *ABIX* (Australasian News Abstracts), April 16, 1999; and "Malaysia Has Expressed Interest in Playing Soccer Matches," *Muzi Lateline News*, April 28, 1999.

187. "Manila Nod for Spratly Joint Patrols," *Agence France-Presse*, August 12, 1999.

188. "No Breakthroughs in Sino-Vietnamese Maritime Talks," *Agence France-Presse*, March 31, 1998; "Vietnam, China Meet for Further Border Talks," *Agence France-Presse*, June 7, 1998; "Jiang Expresses 'Delight' in Progress Achieved in Sino-Vietnam Ties," *Agence France-Presse*, October 21, 1998; and "Vietnam, China Sign Land Border Agreement," *Reuters*, December 30, 1999.

189. "RP, China Fail to Agree on Spratlys," *The Manila Times*, November 17, 1998; "Philippines, China Open Talks Spratly Dispute," *Agence France-Presse*, March 22, 1999.

the situation magnifying.¹⁹⁰ In November 1999, Taiwan announced that it would withdraw its marines stationed in the disputed Spratly and Pratas Island groups in the South China Sea and replace them with coast guards, aimed at reducing tensions in the area.¹⁹¹

B. ASEAN-PRC Dialogues

China participates in a series of consultative meetings with ASEAN including the ARF, the ASEAN/Post Ministerial Conferences (PMC), the ASEAN-China Joint Cooperation Committee, the ASEAN-China SOM Consultations, the ASEAN-China Business Council Meeting, and the ASEAN-China Summit. The territorial disputes between China and member states of ASEAN in the Spratly Islands and the South China Sea had been included in the agenda for discussion in particular at the ARF, PMC, the ASEAN-SOM Consultations, and the ASEAN-China Summit, which helped foster constructive dialogue and consultation on the South China Sea issues. These discussions made significant contributions to efforts toward finding solution for the territorial disputes in the disputed area or helping reduce tensions in the South China Sea, and therefore are considered useful CBMs in the South China Sea.

In December 1997, the ASEAN heads of state/government met their counterparts from China, Japan and South Korea at the second informal ASEAN-Summit in Malaysia. ASEAN and China issued a statement, in which the principles of peaceful settlement of disputes in the South China Sea were reaffirmed by the ASEAN heads of state/government and the President of China. The ASEAN-China Joint Statement announced that the countries concerned had agreed to resolve their disputes in the South China Sea through friendly consultations and negotiations in accordance with universally recognized international law, including the 1982 LOSC. It was also agreed that the concerned countries should exercise self-restraint and to explore ways for cooperation in the South China Sea.¹⁹² In December 1998, the ASEAN leaders met again with leaders of China, Japan and South Korea in Hanoi at the Sixth

190. "China Says to Exercise Restraint over Spratlys," *Reuters*, March 30, 1999.

191. "Troops Pulling out of Spratlys to Avoid Conflict," *China Post* (Taipei), November 19, 1999, p. 19.

192. A copy of the joint statement (in Chinese) is on file with the author. Also see Joint Statement of the Meeting of Heads of State/Government of the Member States of ASEAN and the President of the People's Republic of China, Kuala Lumpur, December 16, 1997, available in ASEAN's web site at <<http://www.aseansec.org/summit/praschn1.htm>>.

ASEAN Summit. Although the South China Sea issues had not been discussed during the meeting, the 1998 Hanoi Declaration issued after the summit did incorporate a paragraph which expressed the ASEAN's position on the issues.¹⁹³ On December 28, 1999, at the informal ASEAN-China Summit, Zhu Rongji, Premier of China, stated that China would continue to render support to and cooperate with member states of ASEAN in regional and international organizations such as ARF, the UN, and others. He also said that China would increase multilateral and bilateral security dialogue and consultations and made joint efforts for the establishment of a new just and reasonable international political, economic and security order.¹⁹⁴ As far as the South China Sea issues are concerned, the Chinese premier stressed that

China will, as always, adhere to the principles and spirit of the China-ASEAN *Joint Statement* signed in 1997 and resolve its differences and disputes with ASEAN countries through friendly consultation and peaceful means. China appreciated the purposes and spirit of the *Treaty of Amity and Cooperation in Southeast Asia* and will continue to support ASEAN in its efforts to establish a zone of peace, freedom and neutrality (ZOPFAN) and a Southeast Asia Nuclear Weapon Free Zone.¹⁹⁵

The South China Sea issues were also discussed at the China-ASEAN dialogue sessions held July 1999, in which China's foreign minister Tang Jiaxuan stated that the approach adopted by Beijing to deal with the South China Sea issues would be:

to proceed from the overall interests of regional peace and stability, strictly abide by the political consensus reached between China and ASEAN at the top level, persist in the approach of seeking common ground while shelving differences, and handle differences and disputes between our two sides by peaceful means and through bilateral friendly

193. See paragraph 30 of the Hanoi Declaration of 1998, December 16, 1998, available at <http://www.aseansec.org/summit/6th/prg_hdec.htm>.

194. See Address by Premier Zhu Rongji of the People's Republic of China at the ASEAN+1 Informal summit held in Manila on November 28, 1999. The address is available in ASEAN's web site at <http://aseansec.org/summit/inf3rd/prg_ch1.htm>.

195. *Ibid.*

consultations and refrain from letting these disputes affect the vital interest of our good-neighbourly friendship¹⁹⁶.

ASEAN foreign ministers and senior officials continued to hold political and security consultations with their counterparts from China at the ARF meetings and the ASEAN-China Senior Officials Consultations. Such meetings helped promote understanding and mutual confidence for the two sides in dealing with the territorial disputes in the Spratly Islands and the South China Sea and thereby lowered tensions in the area. At the 5th ARF meeting held in Manila in July 1998, for instance, China's foreign minister Tang Jiaxuan promised that Beijing would continue to persist in the settlement of disputes with its neighbouring countries through friendly consultation and negotiations in order to safeguard regional peace and stability. He also emphasized that "China will, as always, participate in the multi-tiered and multi-channeled dialogues and cooperation in the security field of the Asia-Pacific region."¹⁹⁷ At the 5th ASEAN-China SOM Consultations held in Kunming on April 5-8, 1999, the senior officials also discussed the South China Sea issues.¹⁹⁸

C. The Code of Conduct for the South China Sea

The Philippine proposal to adopt a regional code of conduct in the South China Sea had been continuously discussed at the regional fora, governmental or non-governmental, in 1998 and 1999. As noted in Chapter IV, the countries concerned in Southeast Asia and the Asia-Pacific region considered the adoption of a regional code of conduct in the South China Sea an important CBM, which would be helpful to reduce uncertainty and suspicion among the claimant countries in the Spratly Islands and elsewhere in the South China Sea. In addition, the adoption of the code could help govern relations between the claimant countries in the disputed areas. The code of conduct in the South China Sea was thus treated as a unique diplomatic instrument for confidence-building, preventive

196. See Address by Foreign Minister Tang Jiaxuan at China-ASEAN Dialogue, Singapore, July 27, 1999. For the address, visit ASEAN's web site at <<http://www.aseansec.org/amm/pmc32dp2.htm>>.

197. See Address by H.E. Mr. Tang Jiaxuan, Minister of Foreign Affairs of the People's Republic of China at the 5th ARF Ministerial Meeting, Manila, July 27, 1998. For the address, visit ASEAN's web site at <<http://www.asean.or.id/amm/arf31osp.htm>>.

198. The First ASEAN-China SOM Consultations were held in April 1995 in Hangzhou, China; the Second in June 1996 in Bukittinggi, Indonesia; the Third in Huangshan, China in April 1997; and the Fourth in Kuala Lumpur, Malaysia in April 1998.

diplomacy, and political and security cooperation in the area. It was also argued that if all concerned claimant countries in the South China Sea accepted and complied with the regional code of conduct, "it would be reasonable to expect that the major powers would find no use for direct military intervention. Conversely, the regional powers would have scant motivation to invite or provoke unwanted major power involvement in their bilateral disputes and problems. The Southeast Asian countries would be required to develop greater self-reliance in peacefully resolving actual and potential conflicts in their region."¹⁹⁹

As recalled, the ASEAN foreign ministers agreed in 1996 to the idea of establishing a regional code of conduct in the South China Sea which would lay the foundation for long-term stability in the area and foster understanding among the claimant countries.²⁰⁰ At the Third Meeting of the Technical Working Group on Legal Matters in the South China Sea held in Pattaya, Thailand October 12-16, 1998, the issue of developing a code of conduct in the South China Sea was picked up and discussed in Session IV. The so-called resource person Dr. Kriangsak Kittichaisaree of Thailand contributed a paper entitled "Code of Conduct in International Law and Relations," in which Kriangsak concluded by suggesting that the Technical Working Group on Legal Matters should:

- compile rules which have been held by the ICJ and other international tribunals to reflect customary international law and which are of relevance to the SCS [South China Sea];
- highlight rules under 1982 LOSC that are relevant to the SCS and bind States Parties to 1982 LOSC to pursue particular courses of action;
- collect samples of actual State practice that may be applicable to the SCS, especially the practice that may

199. See "Security in the Asia-Pacific Region: An Indonesian and ASEAN Perspective," remarks by Ali Alatas Minister Foreign affairs, Republic of Indonesia before the Council on Foreign Relations, New York, December 20, 1996. For the remarks, visit home page of Indonesia's Ministry of Foreign Affairs at <<http://222.dfa-delu.go.id/english/menlu.htm>>.

200. See paragraph 11 of the Joint Communiqué of the Twenty-Ninth ASEAN Ministerial Meeting, Jakarta, July 20-21, 1996. For the communiqué, visit ASEAN's web site at <<http://aseansec.org/politics/pramm29.htm>>.

crystallize into customary international law in the near future.²⁰¹

Kriangsak was of the opinion that the code compiled by the Technical Working Group on Legal Matters would help educate policy-makers and practitioners in the South China Sea as to international legal rights and obligations pertaining to the South China Sea.²⁰² After discussion, a first draft, drawing on provisions in the existing codes of conduct, and relevant statements and declarations on the South China Sea, was circulated among the participants for review. The participants also agreed to continue discussion of the issue.²⁰³

Later on, at the Ninth Workshop on Managing Potential Conflicts in the South China Sea, held at Ancol, Jakarta, Indonesia, December 1-3, 1998, the participants discussed the idea of a regional code of conduct and agreed that the 4th Technical Working Group on Legal Matters would continue to study and discuss the issue of drafting a code of conduct in the South China Sea. They agreed that the Workshop process, including elements of a code of conduct, would be important CBMs, which would be an important aspect in the promotion of understanding, trust, peace, stability, prosperity and co-operation in the South China Sea. The participants also noted the document, entitled "Clauses from Statements, Declarations or Agreements that May be Relevant in Defining Principles Applicable to Possible Code of Conduct in the South China Sea," circulated among the participants at the Ninth SCS Workshop. Participants were requested to send comments to the Center for Southeast Asian Studies (Pusat Studi Kawasan Asia Tenggara) in Jakarta or the South China Sea Informal Working Group in Vancouver. The clauses were taken from the existing bilateral codes of conduct between China and the Philippines and between the Philippines and Vietnam, the ASEAN documents, ASEAN-China joint statements, and the SCS Workshop statements, including the Treaty of Amity and Cooperation in Southeast Asia (24 February 1976), Joint

201. Kriangsak Kittichaisaree, "Code of Conduct in International Law and Relations," paper presented at the Third Meeting of the Technical Working Group on Legal Matters held in Pattaya, Thailand, October 12-16, 1998, p. 13. (Paper on file with the author.)

202. *Ibid.*

203. See Paragraph 10 of Statement of the Third Meeting of the Technical Working Group on Legal Matters, Pattaya, Thailand, October 12-16, 1998. See *Compilation of Meeting Statements from the Informal Working Groups on Managing Potential Conflicts in the South China Sea*, circulated at Tenth Workshop on Managing Potential Conflicts in the South China Sea, Bogor, Indonesia, December 6-7, 1999, pp. 42-45.

Statement of the Meeting of the President of the People's Republic of China and the Heads of State/Government of the Member States of ASEAN (16 December 1997), Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations (1970), Joint Statement of the Republic of the Philippines and the People's Republic of China Consultation on the South China Sea and on other areas of Cooperation (September 1995), and so on.

Despite the fact that all of the clauses were taken from the existing bilateral or multilateral documents in the region or in the world, participants from China expressed their views of not supporting the idea of drafting a regional code of conduct in the South China Sea. The Chinese participant stated that there already exist enough codes of conduct and relevant principles in the United Nations and other international governmental organizations. There is no need for the Workshop to draft such a code of conduct again.²⁰⁴ As a compromise, the Workshop statement simply stated: "Within the context of discussing confidence building measures, including guidelines and a code of conduct in the South China Sea, the participants agreed that the 4th TWG-LM will continue to study and discuss the topic."²⁰⁵

On December 16, 1998, at the 6th ASEAN Summit held in Hanoi, Vietnam, the ASEAN leaders picked up the proposal again and agreed to promote efforts to establish a regional code of conduct in the South China Sea among the parties directly concerned.²⁰⁶ Accordingly, the idea was then discussed at the 5th ASEAN-China SOM Consultations which were held in Kunming in early April 1999. However, China said that there was no need to sign the regional code of conduct in the South China Sea, mainly because the Joint Statement signed between the ASEAN and Chinese leaders was sufficient and presented a confidence-building measure.²⁰⁷

One month later, the ASEAN Senior Officials Meeting made a recommendation asking the Philippines to draft the code and sub-

204. The notes taken by the author during the discussion at the Workshop.

205. See paragraph 14 of the Statement of the Ninth SCS Workshop.

206. See paragraph 39 of the Joint Communique of the 32nd ASEAN Ministerial Meeting held in Singapore, July 23-24, 1999. For the communique, visit ASEAN's web site at <<http://www.aseansec.org/politics/pramm32.htm>>.

207. "Philippines Receive Short-Shrift on South China Sea Disputes," *Agence France Presse*, April 6, 1999.

mit it to the ASEAN SOM Working Group on Zone of Peace, Freedom and Neutrality (ZOPFAN) and the Southeast Asia Nuclear Weapon-free Zone Treaty (SEANWFZ) for immediate consideration at its next meeting.²⁰⁸ Malaysia opposed the Philippine proposal to include the discussion of the code of conduct in the ASEAN ministerial meeting's agenda, held in Singapore July 23-24, 1999.²⁰⁹ Despite the lack of discussion of the code of conduct at the 32nd ASEAN Ministerial Meeting, the participants to the 6th ARF held in Singapore on July 26, 1999 took note of the ASEAN's preparation for a draft regional code of conduct in the South China Sea.²¹⁰ In addition, it was reported that China changed its position and was prepared to talk to ASEAN on the proposed code.²¹¹ Moreover, China's foreign minister Tang Jiaxuan said that Beijing would become the first state with nuclear weapons to sign the SEANWFZ. Beijing also asked ASEAN to set up a joint committee to study the possibility of acceding to the Treaty of Amity and Cooperation in Southeast Asia (TAC).²¹²

In August 1999, the proposed regional code of conduct in the South China Sea drafted by the Philippines was revised for discussion in October after it had been rejected by other ASEAN members, including Malaysia and Vietnam, in July 1999.²¹³ Brunei gave its support for the code.²¹⁴ As of August 16, 1999, the Philippine-drafted code of conduct contained, several important principles, including:

- Disputes relating to sovereignty and jurisdiction in the South China Sea shall be resolved by peaceful means without resort to the use of force or threat of the use of force on the basis of sovereign equality and mutual respect among nations consistent with the recognized principles of international law, including those in the U.N. Convention on the Law of the Sea;

208. "South China Sea Code Would be More Force," *Reuters*, May 10, 1999. Also see paragraph 39 of the Joint Communiqué of the 32nd ASEAN Ministerial Meeting.

209. "ASEAN Agenda Set, Spratlys Bilateral - Malaysia," *Reuters*, July 22, 1999.

210. See paragraph 11 of the Chairman's Statement of the Sixth Meeting of the ASEAN Regional Forum held in Singapore on July 26, 1999. For the statement, visit ASEAN's web site at <http://www.asean.or.id/politics/pol_arf6.htm>.

211. "China Offers Surprise over Spratlys," *Muzi Lateline News*, July 26, 1999.

212. "China to Sign SE Asia Nuclear Treaty," *The Nation* (Thailand), July 28, 1999.

213. For Malaysia's and Vietnam's reasons for reservations, see "Plans for an ASEAN Conduct Code in S. China Sea," *Kyodo World News Service*, October 18, 1999.

214. "Brunei Supports Code of Conduct for Spratlys," *China Post* (Taipei), August 18, 1999, p. 5.

- The Parties undertake to exercise self-restraint in the conduct of activities in disputed areas, and to desist from any act that would affect stability in the region;
- Without prejudice to existing claims of sovereignty and jurisdiction and pending peaceful resolution of disputes in areas subject to overlapping or competing claims, the parties concerned shall seek to find ways, in the spirit of cooperation and understanding, to build trust and confidence between and among them, to include:
 - a. refraining from new occupation of presently unoccupied islands, reefs, atoll, shoals, cays or other features in disputed area;
 - b. ensuring just and humane treatment of nationals of other parties concerned who are in the disputed areas;
 - c. holding dialogues and exchanges among high level defense and military officials of the parties concerned; and
 - d. observing transparency by voluntarily informing other parties concerned of significant policies and measures that affect the disputed areas.
- Without prejudice to existing claims of sovereignty and jurisdiction, the parties concerned may explore or carry out cooperation through bilateral or multilateral agreement, with respect to:
 - a. marine environment protection;
 - b. marine scientific research;
 - c. safety of navigation and communication;
 - d. exploration and exploitation of resources;
 - e. search and rescue operations and
 - f. combating transnational crime, including but not limited to, trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms.²¹⁵

In response to the code of conduct drafted by the Philippines, China pushed for its own version of the regional code in late October 1999 (see Appendix D).²¹⁶ In early November 1999, Malaysia endorsed the regional code of conduct drafted by the Philippines

215. A copy of the code of conduct drafted by the Philippines as August 16, 1999 is on file with the author.

216. "China Pushes Own Draft of Regional Security Code," *Kyodo World News Service*, October 27, 1999.

for the ASEAN side.²¹⁷ But, it was reported that the Philippines opposed some of the key provisions contained in the Chinese version of the code, such as the provision which stated that the concerned countries should “[r]efrain from conducting any military exercises directed against other countries in the Nansha Islands and their adjacent waters.”²¹⁸ The Philippines believed that the said provision was directed at Manila, since the Visiting Forces Agreement signed between the Philippines and the United States in 1998 and ratified by the Philippine Senate in May 1999 allows for the resumption of military exercises between the two countries. On November 24, 1999, member states of ASEAN agreed to the regional conduct of conduct in the South China Sea drafted by the Philippines.²¹⁹ On November 26, 1999, the foreign, economic, and finance ministers of the ten ASEAN member states met together for the first time on the eve of the 3rd ASEAN Informal Summit. During the meeting, the ASEAN ministers noted that a code of conduct in the South China Sea had been drafted by ASEAN, which was considered helpful to maintain peace and stability in the region.²²⁰ On November 26, 1999, it was reported that China refused to accept the ASEAN-proposed draft and did not present its own version of the code for discussion during the 3rd informal ASEAN summit. Nevertheless, China agreed to hold further discussions on the draft in the future.²²¹

Several common or similar principles can be found in the draft code of conduct prepared by each side. Both China and ASEAN express their support for peaceful settlement of the territorial disputes, without resort to the use of force or threat of the use of force. They agree to exercise self-restraint in the conduct of activities in the disputed area, so as not to complicate or magnify the disputes. Without prejudice to existing claims of sovereignty or jurisdiction, the two sides agree to study the possibility of undertaking coopera-

217. “Malaysia, Philippines Agree on Spratly Conduct Code,” *Kyodo World News Service*, November 4, 1999.

218. See Paragraph 8 of the Chinese version of the code of Conduct. For the report, see “Philippines Consolidating S. China Conduct Code,” *Kyodo World News Service*, November 13, 1999.

219. “Draft ‘Code of Conduct’ Approved on South China Sea Issues,” *The Washington Times*, November 25, 1999.

220. See paragraph 16 of the press statement of the Chairman of the Special Joint Ministerial Meeting held in Manila on November 26, 1999. For the statement, visit ASEAN’s web site at <http://www.aseansec.org/summit/inf3rd/ps_sjmm.htm>.

221. “China Rejects ASEAN Draft Code,” *The Nation* (Thailand), November 26, 1999.

tive projects in the areas, such as marine environmental protection, marine scientific research, safety of navigation and communication, search and rescue cooperation, and combating transnational crime. They also agree to use universally recognized principles of international law, including the 1982 United Nations Convention on the Law of the Sea, as the basic norms governing their relations. Both sides also agree to continue their dialogues on the relevant issues through the existing mechanisms.

Several major differences or disagreements can also be found in the two drafts. The adoption of the ASEAN-China regional code of conduct will hinge on the result of compromise or resolution of these differences in the negotiation process. China insists that the code should be applied to the disputed area surrounding the Spratly island group only. The ASEAN, however, wants to see the code observed and applied to the activities conducted in the disputed areas including both the Spratlys and the Paracel Islands. China asserts that disputes relating to the Spratly Islands should be resolved by the sovereign states directly concerned through bilateral negotiations. The ASEAN side prefers both, that is, bilateral and multilateral consultations. The ASEAN draft contains a paragraph urging the parties concerned to refrain from inhabiting or erecting structures on presently uninhabited islands, reefs, shoals, cays, and other features in the disputed area. The Chinese version is silent on this issue. The Chinese version asks the parties concerned to refrain from use or threat of force, or taking coercive measures, such as seizure, detention or arrest, against fishing vessels or other civilian vessels engaged in normal operation in the disputed area. However, the ASEAN side merely proposes to ensure just and humane treatment of nationals or other parties concerned who are either in danger or in distress in the disputed area, but not to those fishermen, in particular from China, who are conducting "illegal" fishing activities in the disputes area. The ASEAN side asks the parties concerned to inform voluntarily other parties concerned of significant policies and measures that affect the disputed area. The Chinese version contains no such wording. Another big difference between the two draft codes is concerned with military activities conducted in the disputed area. China requests the parties concerned to refrain from conducting any military exercises directed against other parties concerned in the Spratly Islands and their adjacent waters, and from carrying out any dangerous and close-in military reconnaissance. In addition, the Chinese side demands that

military patrols activities in the disputed area should be restricted. The ASEAN version of the draft code contains no such demands.

The idea of adopting a regional code of conduct was very much welcomed by the United States. It was considered useful to help reduce the risks of conflict among rival claimant countries to the Spratly Islands. On October 3, 1999, Defense Secretary William Cohen commented at a joint news conference after meeting with Philippine Defense Secretary Orlando Mercado that the adoption of a regional code of conduct in the South China Sea "is a very positive step." The formulation of the code would boost efforts to bring about a diplomatic solution to the territorial disputes in the Spratlys area.²²²

In sum, the adoption, discussion, or proposal of the CBMs noted above should be treated as external policy-input variables, which entered into the U.S. policy making process and brought impact on the formulation of the U.S. policy toward the sovereignty and maritime jurisdictional disputes in the Spratly Islands and elsewhere in the South China Sea.

VII. SOUTH CHINA SEA STATES' ATTITUDES TOWARDS U.S. INVOLVEMENT IN THE DISPUTE

The last, but not least, external policy-input variable examined in this chapter, is the policy position taken by the South China Sea littoral states. In particular, the key players such as China, Vietnam, Malaysia, and the Philippines, regarding whether the United States should intervene or be asked to involve in the management or settlement of the territorial disputes in the South China Sea.

Some of the claimant countries insisted that the territorial disputes in the South China Sea are problems to be resolved and addressed between and among the parties concerned. However, it had also been argued that countries besides the claimants also have good reasons to be concerned about the issue, because any conflict in the South China Sea would affect the safety of international sea lines of communications. Therefore this is a problem for the region as a whole. The implications of tensions and conflicts caused by the territorial and maritime jurisdictional disputes would be adverse to both South China Sea and non-South China Sea states. While the South China Sea territorial disputes should be settled by the parties concerned, as argued by Hasjim Djalal, the interests of non-re-

222. "U.S. Supports Code of Conduct in South China Sea," *Kyodo World News Service*, October 3, 1999.

gional countries should also be taken into account. Their potential contribution on avoid conflict or potential conflict in the area should not be discarded.²²³ Since the Fourth SCS Workshop held in Surabaya, Indonesia in 1993, it had been agreed that "non-South China Sea states and other regional and global organizations would also be invited, as necessary, to be involved and participate in the realization of specific projects of co-operation."²²⁴

Indeed, war in the Spratlys could quickly have an impact on the region's and the U.S. economy, which would put pressure on the U.S. to intervene, as Washington has defense guarantees and treaties with a number of the claimant countries in the area. In addition, American oil companies' eagerness to compete for oil drilling rights in the potential oil and gas fields in the Spratly Islands may draw the United States into the territorial disputes. In fact, the U.S. companies Crestone, Vaalco, Mobil, Conoco, and Benton had signed contracts with the claimant countries to explore or exploit oil and gas resources in the Spratly Islands.²²⁵ During the Persian Gulf War, the United States did use its military might to protect its access to oil. The U.S. defense officials had also warned in the past that force would be used in the South China Sea if the exercise of the navigation rights were disrupted.

Most, if not all, of the ASEAN countries, prefer the continuous U.S. military presence in Southeast Asia and the Asia-Pacific region. This is mainly because they believe that the U.S. military presence will help prevent the Chinese expansionism in the South China Sea or check Beijing's ambitious moves to fill in the power vacuum in the region created as a result of the end of Cold War. Singapore, Thailand, the Philippines, and Brunei have been consistent supporters of the U.S. military presence in Asia. Even Vietnam is now be-

223. Hasjim Djalal, "Preventive Diplomacy in Asia-Pacific," *Jakarta Post*, August 27, 1998.

224. See also paragraph 18 of the Statement of the Fourth Workshop on Managing Potential Conflicts in the South China Sea, held at Surabaya, Indonesia on August 23-25, 1993. For the statement, see *Compilation of Meeting Statements from the Informal Working Groups on Managing Potential Conflicts in the South China Sea*, circulated at Tenth Workshop on Managing Potential Conflicts in the South China Sea, Bogor, Indonesia, December 6-7, 1999, p. 27.

225. See "Conoco Strikes Oil in Natuna," *Jakarta Post*, September 3, 1998; "Alcorn Urges On-site Survey of Spratlys," *Philippine Daily Inquirer*, November 14, 1998; "Producer Benton Reveals \$105 Mil Loss Company Still Has Cash Cushion," *Platt's Oilgram News*, March 26, 1999, p. 3; "Contract for Natuna Gas fields be Extended," *Jakarta Post*, January 11, 1999; Ross Marlay, "China, the Philippines, and the Spratly Islands," *Asian Affairs*, Vol. 23, No. 4, Winter 1997, p. 206.

lieved moving toward supporting U.S. military presence in the region. Although the ASEAN states want the continuous U.S. military presence in Asia, they hold different points of view regarding whether the U.S. should intervene or be involved in the territorial disputes in the South China Sea.

The South China Sea littoral countries can be divided into two groups in terms of supporting or not supporting U.S. involvement in the South China Sea issues. It is observed that the Philippines, Singapore, Thailand, Brunei, and Taiwan are the countries that have been rendering support for the U.S. involvement. Among these five parties, the Philippines apparently has been the leading advocate of U.S. intervention in the territorial disputes in the Spratlys area. In fact, Manila has been asking for more U.S. involvement in the disputes. China, Vietnam, Malaysia, and Indonesia are the four countries that have opposed the U.S. involvement in the South China Sea territorial disputes. Among them, China, with no doubt, has been the leading advocate in opposition to the U.S. intervention in the disputes.

The claimant countries' attitudes toward the U.S. involvement in the South China Sea issues were reflected in their reactions to the U.S. proposal to convene a meeting of all claimants with the United States playing the role of an "honest broker" in January 1999.²²⁶ China immediately rejected the U.S. proposal, saying that "[e]xternal interference in this matter is unacceptable and will only complicate the current situation."²²⁷ On January 15, 1999, Malaysian Prime Minister Mahathir Mohamad also stated that Washington should stay out of the territorial disputes in the South China Sea. He was quoted as saying, "There is no need for the United States to interfere in the matter. We can resolve it among ourselves."²²⁸ In May 1999, Malaysian foreign minister Syed Hamid Albar reiterated its government's position on the U.S. involvement in the dispute, saying that "[p]eace, stability and the future of this area would very much be dependent on ourselves. We must build

226. "U.S. Proposes Meeting of All Spratlys Claimants," *Kyodo World News Service*, January 12, 1999; "Philippines Continue To Try to Resolve Spratly Dispute," *Central News Agency* (Taiwan), January 12, 1999; "Philippines FM Cautions Against US Involvement in Spratly Dispute," *Agence France-Presse*, January 13, 1999; "Estrada Backs US Proposal for Meeting among Spratlys Claimants," *The Philippine Daily Inquirer*, January 1, 1999.

227. "Beijing Rejects US Mediation in Spratly Dispute," *Agence France-Presse*, January 16, 1999.

228. "Mahathir Wants U.S. to Stay out of Spratlys Row," *Reuters*, January 15, 1999.

the necessary building blocks to achieve it rather than inviting a third party to interfere in our regional affairs."²²⁹ A similar position was taken by Vietnam and Indonesia in the same month.²³⁰ Even the Philippine foreign secretary Domingo Siazon registered some reservations about the idea of U.S. involvement in the disputes, arguing that involving the United States in efforts to settle the territorial disputes in the South China Sea risked transforming the conflict into a nuclear one.²³¹

Since the issue of a comprehensive policy statement on the Spratlys and the South China Sea by the State Department 1995, it has been the U.S. position that Washington "is willing to assist in any way the claimant countries deem helpful."²³² But it appears that while the U.S. military presence will continue to be welcomed by the ASEAN states to help maintain the balance of power in Asia, its involvement in the South China Sea disputes will continue to be opposed by the three key claimant countries to the Spratly Islands, namely, China, Vietnam, and Malaysia, in the near future.

In any case, the external policy-input variables identified and discussed in this chapter had entered into the U.S. policy making process and then affected the development of the U.S. policy on the Spratlys and the South China Sea. The conversion process of U.S. policy making during the 1998-1999 two-year period is discussed in next Chapter.

229. "Malaysia Says A 'Restrained' China Claims Hot Spots in Asia," *Agence France-Presse*, May 29, 1999.

230. "Vietnam Says Spratlys Issue for Claimants Only," *Reuters*, January 14, 1999; "Estrada Calls NSC Meet on Spratlys," *Philippine Star*, January 15, 1999.

231. "Philippines FM Cautions Against US Involvement in Spratlys Dispute," *Agence France-Presse*, January 13, 1999.

232. For the statement, see Spratlys and the South China Sea, Statement by Christine Shelly, Acting Spokesman, May 10, 1995. The statement can be found in U.S. Interest in Southeast Asia, *Hearing* before the Subcommittees on International Economic Policy and Trade and Asia and the Pacific of the Committee on International Relations, House of Representatives, 104th Congress, 2nd Session, May 30 and June 19, 1996 (Washington, D.C.: GPO, 1997), p. 157.

CHAPTER VI

THE CONVERSION PROCESS OF THE U.S. SOUTH CHINA SEA POLICY-MAKING IN THE YEARS 1998 AND 1999

INTRODUCTION

After their entering into the U.S. policy-making process, the six major policy-input variables, as identified and discussed in Chapter V, were considered and debated in line with the existing U.S. interests in the Spratlys/South China Sea area. These discussions included U.S. governmental officials, in particular those decision-makers in the Departments of State and Defense, the concerned members in both houses of the U.S. Congress, and the American scholars who are specializing in ocean law and policy, East Asian security, and the South China Sea issues. As a result of these considerations and debates, the policy-input variables will be converted into policy outputs and accordingly bring about either positive or negative policy outcomes resulting from the implementation of the U.S. policy toward the sovereignty and maritime jurisdictional disputes in the South China Sea. The exact policy outputs regarding how the U.S. should deal with the South China Sea territorial disputes will not be known until their being announced, released, or disclosed in the years ahead. What we do know is that the U.S. government might either adhere to the position outlined in the policy statement issued by the State Department in May 1995 or revise the U.S. policy by taking different approaches in dealing with the South China Sea issues. In fact, American governmental officials and scholars did make several policy recommendations that, according to them, were considered useful and thus should be carried out to help promote or achieve U.S. national interests in the Spratlys/South China Sea area.

In this chapter, consideration of the identified key policy-input variables by the U.S. government in the policy conversion process is analyzed in detail. In addition, those policy recommendations offered by the U.S. scholars to help mold a sound policy toward the Spratly Islands and the South China Sea are also summarized in the last section of this chapter.

I. EXCESSIVE MARITIME CLAIMS AND THE PENDING U.S. RATIFICATION OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

As noted in Chapter V, the general acceptance of the 1982 LOSC by the countries in the Spratlys/South China Sea area and the developments of national maritime legislation and ocean policy within the same group of the countries had created new policy challenges for the United States. Since May 1995, the U.S. government has officially warned that Washington would “view with serious concern any maritime claim, or restriction on maritime activity, in the South China Sea that was not consistent with international law, including the 1982 United Nations Convention on the Law of the sea.”¹ In 1998, for instance, the U.S. armed forces conducted operational assertion challenging the excessive maritime claims made, *inter alia*, by Cambodia (excessive straight baselines and security zone), Malaysia (excessive restriction on military activities in EEZ), the Philippines (excessive straight baselines and archipelagic waters as internal waters), and Vietnam (excessive straight baselines, security zone, and prior permission for warship to enter the territorial sea) in the Spratlys/South China Sea area.² The U.S. military vessels and aircraft frequently conducted routine transits through the Strait of Malacca. Its air and surface units also transited the Indonesian Archipelago in archipelagic sea lanes passage on 20 occasions and transited the Philippine Archipelago by exercising high seas freedoms, transit passage, and innocent passage, as applicable, on 32 occasions.³ The relevant provisions⁴ of the 1982 LOSC had often been cited to challenge the excessive maritime claims made by the countries in the Spratlys/South China Sea area, including China’s

1. Spratlys and the South China Sea, Statement by Christine Shelly, Acting Spokesman, May 10, 1995. The statement can be found in U.S. Interest in Southeast Asia, *Hearing* before the Subcommittees on International Economic Policy and Trade and Asia and the Pacific of the Committee on International Relations, House of Representatives, 104th Congress, 2nd Session, May 30 and June 19, 1996 (Washington, D.C.: GPO, 1997), p. 157.

2. William S. Cohen, Secretary of Defense, *Annual Report to the President and the Congress, 1999*, Appendix I (Freedom of Navigation). For the report and the appendix, visit the Department’s web site at <<http://www.dtic.mil/execsec/adr1999/toc.html>>.

3. See the Appendix I, *ibid.*, at <http://www.dtic.mil/execsec/adr1999/apdx_i.html>.

4. In particular, Article 7 (Straight Baselines), Article 17 (Right of Innocent Passage), Article 46 (Definitions of Archipelagos and Archipelagic State), Article 47 (Archipelagic Baselines), and Article 87 (Freedom of the High Seas) of the 1982 LOSC.

excessive straight baselines and its claim regarding prior permission for warships to enter the territorial sea.

Since its entry into force on November 16, 1994, the 1982 LOSC has also been referred to repeatedly by the claimant countries as the main legal instrument to help resolve disputes over sovereignty and maritime jurisdiction in the Spratlys/South China Sea area. The U.S. government has taken a similar position. At those bilateral or multilateral meetings, held in the Asia-Pacific region to address regional security issues, it has consistently been urged to resolve maritime disputes in the Spratlys/South China Sea area in accordance with the 1982 LOSC.

In recognition of the importance of the 1982 LOSC and the benefit arising from becoming a party to the convention, President Clinton transmitted the document to the U.S. Senate for advice and consent. Nevertheless, no favorable consideration of the 1982 LOSC was given by the Senate Committee on Foreign Relations during the 105th U.S. Congress nor the first session of the 106th U.S. Congress.

In January 1998, the U.S. State Department's Bureau of Oceans and International Environmental and Scientific Affairs released a copy of fact sheet entitled "U.S. Oceans Policy and the Law of the Sea," in which it stated that "[e]ntry into force of a widely accepted and comprehensive law of the sea convention . . . has been a consistent objective of successive United States Administrations since negotiations began on such a convention over two decades ago."⁵ The fact sheet also stressed that early accession to the 1982 LOSC by the United States "is important to maintain a stable legal regime for all uses of the sea, . . . Maintenance of such stability is vital to United States national security and economic strength."⁶ In May 1998, U.S. Senators John McCain, Olympia Snowe, John Chafee, and Frank H. Juskowski jointly sent a letter to Senator Jesse Helms, Chairman of the Senate Committee on Foreign Relations. Therein they urged favorable consideration of the 1982 LOSC by the Committee as soon as possible.⁷ Apparently, the appeal did not work.

In late May 1998, a number of U.S. federal agencies with oceans responsibilities detailed the reasons for U.S. accession to the

5. For the fact sheet, visit Council on Ocean Law's home page at <http://www.oceanlaw.org/fs_oceans_los.html>.

6. *Ibid.*

7. See Marjorie Ann Browne, "The Law of the Sea Convention and U.S. Policy," *CRS Issue Brief for Congress*, December 30, 1998.

1982 LOSC in a compiled document⁸ that was prepared for the Oceans Conference held at Monterey, California June 11 and 12, 1998. The Defense Department stated in its position paper entitled "The Law of the Sea Convention and National Security Interests" that the U.S. adherence to the 1982 LOSC would help:

- Preserve freedoms of navigation and overflight on the high seas;
- Maintain high seas freedoms in the 200 NM Exclusive Economic Zones of coastal states;
- Guarantee freedom of navigation and overflight through international straits (most crucial are Gibraltar, Hormuz, and Malacca);
- Establish the regime of archipelagic sea lanes of passage (for transit through strategically located archipelagoes, such as Indonesia and the Philippines); Guarantee passage through foreign territorial seas along with a clear delineation of coastal states regulatory authority;
- Limit the width of the territorial sea to twelve nautical miles;
- Establish more objective rules for drawing baselines for measuring maritime zones (restrains coastal states from extending their jurisdictional reach farther seaward);
- Preserve the sovereign immune status of our warships and other public vessels and aircraft;
- Maintain the careful balance between coastal state jurisdiction over maritime pollution and the international community's navigation freedoms; and Preserve the freedom to conduct military surveys seaward of foreign territorial seas (without the requirement to obtain the coastal state's permission).⁹

On June 12, 1998, President Clinton addressed at the Oceans Conference, in which he urged the United States

. . . join the rest of the world in ratifying, at long last, the Convention on the Law of the Sea. The character of our country, and, frankly, the nature of a lot of the economic and political success we have enjoyed around the world has rested in no small part on our continuous championing of the rule of law at home and abroad. The historic Con-

8. The Convention on the Law of the Sea, Oceans Conference, Monterey, California, June 1998, available at U.S. Department of State's home page at <http://www.state.gov/www/global/oes/oceans/980610_los.html>.

9. *Ibid.*

vention on the Law of the Sea extends the rule of law of the world's oceans. . . . This convention assures the open seaways that our Armed Forces and our fishing telecommunications and shipping industries require. . . . This year, during this legislative session, the United States Senate should, and must, confirm its leadership role by making America a part of the community of nations already party to the Convention on the Law of the Sea.¹⁰

The President's call was not fruitful either. Hearings on ratification of the 1982 LOSC were never scheduled by the U.S. Senate Committee on Foreign Relations in 1998 or 1999. As a result, it became less persuasive and justifiable when Washington took actions to challenge the South China Sea littoral states' maritime considered by the United States as excessive, or urge the claimant countries in the Spratlys/South China Sea area to resolve disputes over sovereignty and maritime jurisdiction in accordance with the 1982 LOSC.

II. U.S. REACTIONS TO THE RECENT DEVELOPMENTS IN THE SOUTH CHINA SEA

Conflicting claims over the Spratly Islands in the South China Sea had never been put at the top of U.S. list of security concerns in the Asia-Pacific region. The U.S. Defense and State Departments' reactions to the recent developments regarding sovereignty and maritime jurisdictional disputes in the South China Sea, together with measures taken by members of the U.S. Congress, are examined below.

A. The U.S. Defense Department's Response and Position

After the disclosure of the continuous expansion of Chinese structures built on Mischief Reef in October 1998, the South China Sea issues were listed as third in the Defense Department's list of security concerns in the Asia Pacific region. The number one concern was the situation in the Korean peninsula and the second about the proliferation of weapons of mass destruction in the region.¹¹ U.S. Pentagon officials were of the opinion that China's actions in the Spratlys/South China Sea area did not comprise a

10. President Clinton, Remarks to the National Oceans Conference in Monterey, California, June 12, 1998, see *Weekly Compilation of Presidential Documents*, Vol. 34, No. 25, June 22, 1998, p. 1110.

11. "US Believes China Eyeing More Areas," *The Manila Times*, December 24, 1998.

security threat to the United States. Accordingly, the Defense Department's response to the Chinese actions in the disputed Spratly Islands had been consistent with the statement issued by the U.S. State Department in May 1995. Pentagon officials kept appealing to all parties concerned in the Spratly Islands to show restraint. For instance, Kenneth Bacon, U.S. Assistant Secretary of Defense, answered a question relating to the Spratly dispute at the Department's News Briefing on January 7, 1999, reiterating Pentagon's position that

[o]ur view on the Spratlys is very clear. We have not taken a position on the sovereignty of the Spratlys. We have taken a very clear position on the view that this is a dispute that should be settled peacefully by the parties — and there are four or five countries that have various interests in the Spratlys or claim to have interests in the Spratlys — that is something for them to work out peacefully and it should be done in a way that does not hinder free navigation in that area. And those are the points we've made repeatedly.¹²

In January 1999, a U.S. spy satellite photographed construction of a fuel depot at a Chinese military airfield on Woody Islands of the Paracel Islands group in the South China sea. The U.S. Pentagon officials believed that the construction was part of China's effort to extend the range of *SU-27* fighter bombers that were deployed on the Island and could be used in a possible conflict against the Philippines in the Spratlys area. In response to the Chinese military act, Capt. Michael Doubleday, a Pentagon spokesman, said that the U.S. defense Department has been closely monitoring activities in the South China Sea and following developments regarding Chinese military modernization very carefully. He also reiterated the Department's position, calling on all claimants to the Spratly and the Paracel Islands to resolve their differences in a peaceful manner, consistent with international law, and to ensure free navigation in the area not being disrupted.¹³

Taking note of the reiteration of unilateral claims of sovereignty, increases in the fortification of various islands, increased na-

12. See comments made by Kenneth Bacon, Assistant Secretary of Defense, at Department of Defense News Briefing held on January 7, 1999. For the News Briefing, visit the Department's Defense LINK at <<http://www.defenselink.mil>>.

13. "Pentagon Monitors China over Actions on Disputed Isles," *The Washington Times*, February 12, 1999.

val patrol and more skirmishing between naval forces, fishing boats and surveillance aircraft in the Spratlys/South China Sea area since July 1995, Admiral Dennis Blair, the command-in-chief of U.S. Pacific Command, suggested in May 1999 that the competing South China Sea claims should be discussed under a process promoted by the United States called "security pluralism."¹⁴ The term "security pluralism," according to the admiral, was referred to "a network of bilateral and multilateral relationships adding up to a resilient security framework for the region."¹⁵ Admiral Blair also suggested that Beijing should extend its willingness to discuss the disputes with Manila and the four other claimants as well.¹⁶

One of the most recent statements regarding the U.S. Department's response to the recent developments in the South China Sea and its position on the Spratly Islands dispute was made by U.S. defense secretary William Cohen at the Department's News Briefing given on October 3, 1999. The secretary was asked by the reporters to comment on the Spratlys disputes and he answered,

The United States of course doesn't take a position in terms of authority or ownership rights or the legal implications for the Spratlys. But we do reject very strongly any country taking unilateral action to assert sovereignty over the Spratlys. This is something that should come about through diplomatic efforts.¹⁷

In addition, while commending the Philippines' efforts to formulate a regional code of conduct in the South China Sea and considering the efforts a very positive step, the secretary stressed that all diplomatic avenues should be exhausted. The United States supports diplomacy prevailing, he said.¹⁸

B. The U.S. Department of State's Reactions and Position

The U.S. Department of State had been adhering to those principles outlined in the statement on the Spratlys/South China Sea of May 1995 to deal with recent developments regarding sovereignty

14. "US Echoes Erap's Line on Spratly Row," *The Philippine Daily Inquirer*, May 23, 1999.

15. *Ibid.*

16. *Ibid.* See also "'Multilateral Pacts' Key to Security," *The Straits Times* (Singapore), May 23, 1999.

17. See comments made by William Cohen, Secretary of Defense, at Department of Defense News Briefing held on October 3, 1999. For the News Briefing, visit the Department's Defense LINK at <<http://www.defenselink.mil>>.

18. *Ibid.*

and maritime jurisdictional disputes in the area in 1998 and 1999. In May 1998, Stanley O. Roth, Assistant Secretary for East Asian and Pacific Affairs, U.S. State Department, testified before the House International Relations Subcommittee on Asia and the Pacific, in which he stated that the United States "has been trying to foster a more energetic diplomatic process with the countries in the region, particularly the claimants, or the Indonesian workshop, to try to deal with the South China Sea issues."¹⁹ He also stated that the U.S. military presence, bilateral security alliances and relationships, and multilateral fora such as the ARF are keys to maintaining stability in the Asia-Pacific region.²⁰

On July 21, 1998, Stanley O. Roth gave a speech entitled "Multilateral Approaches to Regional Security" at Henry L. Stimson Center in Washington, in which he commented that the South China Sea territorial disputes, in particular between China and the Philippines, remained a dangerous source of potential conflict in the Asia-Pacific region. "Although the Mischief Reef incident led to China's commitment to abide by the law of the sea," he said, "tensions over conflicting claims persist and no progress has been achieved towards a diplomatic resolution of the numerous disputed claims."²¹ He warned that future conflicts could erupt if preventive measures to promote resolution to these disputes were not worked out. Having said that, the assistant secretary cited two approaches that had been suggested by experts to help solve the problem. One approach would be to negotiate an agreement that resolves the status of each of the claims, the other would involve shelving sovereignty claims in favor of joint resource developments in the disputed area.²²

On January 4, 1999, in response to a report found in *the Washington Times* regarding U.S. Representative Dana Rohrabacher's accusation of the State Department of attempting to impede his flying over the disputed Mischief Reef in the Spratly Islands group in December 1998,²³ the Department's spokesman James P. Rubin

19. Tradition and Transformation: U.S. Security Interests in Asia, *Hearing* before the Subcommittee on Asia and the Pacific of the Committee on International Relations, House of Representatives, 105th Congress, 2nd session, May 7, 1998, p. 16.

20. *Ibid.*

21. The text of the talk can be found at U.S. State Department's Public Diplomacy Query (PDQ) home page <<http://pdq.state.gov/>>.

22. *Ibid.*

23. The representative visited Mischief Reef on December 10, 1998 as a part of his fact-finding tour, see *Agence France-Presse*, December 11, 1998.

confirmed the report, saying that “[w]e did seek to discourage his travel to the Mischeif Reef area in view of security concerns, since this hadn’t been done in this way before.”²⁴ In addition, the spokesman reiterated the State Department’s position on the Spratly disputes. According to his statement, the United States has repeatedly spoken out, both publicly and through diplomatic channels against unilateral actions that increase tensions in the Spratlys/South China Sea area. The United States has continuously called for all claimants of the Spratly Islands to resolve their differences in a peaceful manner, consistent with international law. The United States has strongly denounced the use of or the threat of the use of force to resolve the competing claims in the area.²⁵

In early January 1999, it was widely reported that the United States was to play a role as an honest broker in helping resolve the South China Sea territorial disputes.²⁶ Later on, it was clarified by Philippine Foreign Secretary Domingo Siazon that the United States wanted only to participate in talks among claimants to the Spratly Islands and not broker them.²⁷ Interestingly, the Philippine Secretary also said that the U.S. was considering elevating the annual South China Sea workshop, sponsored by and held in different cities of Indonesia on managing the issue, from an unofficial to an official one.²⁸ This comment might be made based on the Philippine Secretary’s intents or wishes. While the United States indeed has given its support for the informal South China Sea workshop, it did not plan to upgrade the informal workshop to a governmental one. The statement made by U.S. Ambassador to the Philippines Thomas Hubbard in early February 1999 clarified the U.S. position in this regard. He said, “[w]e have been supportive of workshops organized by Indonesia and of discussions but we want to see coun-

24. State Department Regular News Briefing, January 4, 1994, Federal Document Clearing House, Washington Transcript Service.

25. *Ibid.*

26. See for instance “U.S. Proposes Meeting of All Spratlys Claimants,” *Kyodo World News Service*, January 12, 1999; “US Backs Conference of Spratly Claimants,” *Philippine Headline News Online*, January 13, 1999; “Vietnam Says Spratlys Issue for Claimants Only,” *Reuters*, January 14, 1999; “Estrada Backs US Proposal for Meeting Among Spratlys Claimants,” *The Philippine Daily Inquirer*, January 15, 1999; and “Erap Wants US Role in Spratlys Row,” *The Manila Times*, January 15, 1999.

27. “Siazon Denies U.S. Offer to Broker Talks on Spratlys,” *Asian Political News*, January 18, 1999.

28. *Ibid.*

tries in the region take the lead.”²⁹ It is noted here that the majority of the participants in the South China Sea workshop wanted to keep the workshop informal, which, they believed, would help facilitate more frank and open discussions without the limitations set by formalities.

In response to a question raised during the State Department’s noon briefing given on March 11, 1999 concerning the U.S. reaction to the repeated calls from President Estrada of the Philippines, Rubin reiterated the Department’s position on the disputes made since May 1995. He stressed that the maintenance of peace and stability and freedom of navigation in the area of the South China Sea are main U.S. interests, and that the United States tends to be willing to assist when claimants deem helpful.³⁰

It seems that the U.S. Department of State began to adopt a stronger and more active stance on the South China Sea issues in July 1999 when unilateral actions continuously being taken by the claimant countries in the area. In June 1999, the Philippine navy vessel rammed and sank a Chinese fishing vessel in the disputed waters in the South China Sea and Malaysia completed construction of a two-story concrete building and a helipad on Investigator Shoal in the Spratly Islands group. In response to increasing unilateral and aggressive actions by the claimant countries in the area, the United States began to intervene in the South China Sea sovereignty disputes.³¹ The changing attitudes of the U.S. government toward the way how the South China Sea issues should be dealt with was found in the statement made by Secretary Albright in her intervention at Sixth ARF meeting held in Singapore on July 26, 1999. The secretary stated,

Along with many other countries, *the United States is increasingly concerned about rising tensions in the South China Sea* [emphasis added]. Several nations have sought recently to bolster their claims in the area by building or upgrading outposts.

29. “Philippine House Leader Calls on US to Help Resolve Spratly Dispute,” *Agence France-Presse*, February 3, 1999.

30. State Department Noon Briefing, March 11, 1999 (DPRK, Colombia, Embassy Security, Kosovo, Spratlys), for the transcript, visit the State department’s Public Diplomacy Query (PDQ) home page at <<http://pdq.state.gov>>.

31. “Spratlys Sovereignty Dispute, U.S. Intervention and Mediation,” *United Daily* (Taipei), July 11, 1999, p. 11.

Incidents at sea have multiplied. Tensions have risen. And we have been reminded that unresolved territorial disputes can spark violence that leaves no one better off.

The stakes are too high to permit a cycle to emerge in which each incident leads to another with potentially greater risk and grave consequences. *We cannot simply sit on the sidelines and watch.* [Emphasis added] Nor can there be any doubt that this is an appropriate forum for discussion of this issue. All members of the ARF have an interest in peace and stability in the South China Sea.

So we must ask ourselves whether we are doing all we can to find diplomatic approaches, identify confidence-building measures, and take other concrete steps to stabilize the situation and make a peaceful resolution in the area more likely. [Emphasis added]³²

According to this statement, it is clear that the U.S. wanted to strengthen the role of the ARF in its efforts to help reduce tensions and to find possible solutions for the sovereignty and maritime jurisdictional disputes in the Spratlys/South China Sea area. Nevertheless, it is interesting to explore what the U.S. government has in mind regarding diplomatic approaches, CBMs, and concrete steps, which are useful to stabilize the situation and made a peaceful settlement in the area more likely. Supposedly, the U.S. government is in support of bilateral and multilateral negotiations between and among the claimant countries themselves, such as the ones between the Philippines and China, and between Vietnam and China. It also supports the existing multilateral frameworks, official or unofficial, in which the question of South China Sea territorial disputes have been listed in the agenda for discussions, such as the ASEAN, the ARF, the CSCAP, the South China Sea workshop, and others. As pointed out by U.S. Assistant Secretary Stanley Roth, the ARF is “a confidence building measures at a minimum and a vehicle for promoting peace and stability over the longer term.”³³ Secretary Albright also stated in July 1999 that the U.S. is a strong supporter of the ARF and co-chaired with Thailand the ARF Intersessional

32. Security Challenges Confronting the Asia-Pacific Region, Secretary Allbright's Intervention at Sixth ASEAN Regional Forum, Singapore, July 26, 1999. The text is available at *U.S. Department of State Dispatch*, Vol. 10, No. 7, August/September 1999, pp. 3-6.

33. See the Secretary's address presented at Australia National Press Club on August 26, 1999. The transcript of the address is available at the State department's Public Diplomacy Query (PDQ) home page at <<http://pdq.state.gov>>.

Group on Confidence Building Measures held in March 1999.³⁴ In addition, the U.S. welcomes and supports those CBMs, either suggested, adopted, or implemented, by the participating countries in regional security fora, such as the issue of white paper on national defense policy, visits of military officials, signing a bilateral or regional code of conduct, and so on. As far as “other concrete steps” are concerned, it remains to be observed closely. However, it is worth noting that Secretary Albright supported the idea of establishing a “good offices” role for the ARF chair, so that the participating countries in the ARF could call on the chair for assistance when they have disputes. This would include the territorial dispute between or among ARF members such as China, Brunei, Malaysia, the Philippines, and Vietnam, in the Spratlys/South China Sea area.³⁵

C. Actions Taken by the U.S. Congress

Members of the U.S. Congress strongly reacted to the Chinese occupation of Mischief Reef in 1995. Members introduced resolutions in both houses to express the sense of the Senate or the House with respect to peace and stability in the South China Sea and urging the Clinton administration to take actions to deal with the sovereignty and maritime jurisdictional disputes in that area.³⁶ In contrast, almost nothing had been done by the U.S. Congress to express its concerns over the South China Sea issues since the discovery of Chinese expansion of the structures in October 1998. Perhaps this is excepted by U.S. Representative Dana Rohrabacher’s fact-finding tour over the disputed Spratly Islands on December 10, 1998 and his efforts to draw attention to the issue from his fellow congressmen later on, as well as the expression of the sense of the Congress relating to transfer of excess defense articles and naval vessels from the United States to the Philippines.

On December 10, 1998, U.S. Representative Dana Rohrabacher, a senior member of the House Committee on International Relations, overflowed on board the Philippine *C-130* at only 300 feet and made several passes over Mischief Reef in the Spratly Islands group to get a close-up view of the Chinese structures built on the disputed reef and its navy ships presented in the adjacent waters. After the visit, he denounced the Chinese expansion of permanent

34. *Supra* note 32, p. 3.

35. *Ibid.*, p. 5.

36. The Congressional actions were discussed in detail in Chapter III of this book.

structures on the disputed reef and considered the presence of three Chinese warships in the waters nearby the disputed island Beijing's move to "intimidate" and "bully" its smaller and militarily weakened neighbor. The representative promised to ask his government to pressure China to withdraw the warships and dismantle the structures on Mischief Reef after he returned to the U.S.³⁷ According to Roilo Golez, an active member on the South China Sea issues in the Philippine House of Representatives, Rhorabacher promised that he would be point man for the Philippines in the U.S. Congress in Manila's efforts to "make international noise and make this an international issue to let the world know how a giant power like China is bullying a weak, small country like the Philippines which is simply protecting its EEZ."³⁸ In late December 1998, Rhorabacher accused the Clinton administration of playing down China's aggression in the Spratlys/South China Sea area in his report on the Mischief/Spratlys situation that was submitted to U.S. Congressman, Benjamin Gilman, Chairman of the House International Relations Committee. In the report, Rhorabacher said that the Chinese navy had been engaged in a "de facto encirclement of Spratly Islands" by constructing military posts such as those discovered on Mischief Reef in November 1998. Rhorabacher also stated that "[f]or two years, the State Department and the Pentagon have pursued an 'ostrich policy' of burying their heads in the sand downplaying these dangerous developments" in the Spratlys/South China Sea area.³⁹ Despite the call and criticism from the representative, the Clinton administration remained aloof on the issue. Not only the U.S. Department of State's "ostrich policy", as described by Rhorabacher, or "hands off policy" as described by the Philippines, remained intact. It also confirmed that the Department, as noted earlier, tried to discourage Rhorabacher's visit before he began the "fact-finding tour" in the Spratlys area.⁴⁰ Little came out of the House International Relations Committee either.

37. "Philippines Moves to Contain Possible Spratlys Fallout," *Agence France-Presse*, December 11, 1998.

38. See Press Statement of Roilo Golez on December 13, 1998, available at this representative's home page <<http://www.golez.com/Dec13.htm>>.

39. "US Lawmaker Says Washington Downplaying China Threat in South China Sea," *Agence France-Presse*, December 27, 1998.

40. As Representative Rhorabacher stated in the House on June 29, 1999 that "[o]ur government, the State Department, tried everything they could do to prevent me from getting there so that I could not explain that to the American people and take the pictures that would open up this debate." See *Congressional Record — the House*, June 29, 1999, p. H5086.

In January 1999, Rhorabacher introduced a resolution in the House of Representatives urging the Congress and the Clinton administration to provide surplus air and naval equipment to the Armed Forces of the Philippines so that it would be in a better position to counter China's moves in the Spratly Islands. The U.S. Congress did not look at the proposal, mainly because of being tied up with a messy impeachment trial during that time.⁴¹ In early March 1999, *H.R. 973*, entitled "An Act to modify authorities with respect to the provision of security assistance under the Foreign Assistance Act of 1961 and the Arms Export Control Act, and for other purposes," was introduced in the House by Representative Benjamin A. Gilman. Section 606 expressed sense of the Congress relating to transfer of naval vessels and aircraft to the government of the Philippines. The section wrote,

- (a) SENSE OF THE CONGRESS- It is the sense of the Congress that —
 - (1) the President should transfer to the Government of the Philippines, on a grant basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321), the excess defense articles described in subsection (b); and
 - (2) the United States should not oppose the transfer of F-5 aircraft by a third country to the government of the Philippines.
- (b) EXCESS DEFENSE ARTICLES- The excess defense articles described in this subsection are the following:
 - (1) UN-1 helicopters, A-4 aircraft, and the "POINT" class Coastal Guard cutter POINT EVANS.
 - (2) Amphibious landing craft, naval patrol vessels (including patrol vessels of the Coast Guard), and other naval vessels (such as frigates), if such vessels are available.⁴²

The bill introduced was referred to the Senate Committee on Foreign Relations on June 16, 1999. In late May 1999, Gilman introduced a similar bill *H.R.1908* again, which contained the exact same

41. "US Weapons for Manila Delayed by Impeach Issue," *Manila Standard*, January 20, 1999.

42. For the introduced bill *H.R. 973*, visit the U.S. Congress' THOMAS World Wide Web system online at <<http://thomas.loc.gov>>.

languages quoted above.⁴³ No further actions had been taken since *H.R.1908* was reported to the House. On July 1, 1999 and November 17, 1999, Representative Christopher H. Smith introduced *H.R.2415* and *H.R.3427* respectively in the House.⁴⁴ Again, the introduced bills contained a section on security assistance for the Philippines. The languages written in the section were the same with those contained in *H.R.973* and *H.R.1908*. The proposed four bills had not been enacted into law during the first session of the 106th Congress. Interestingly, the Philippines' "point man" in the U.S. Congress, Rhorabacher, did not co-sponsor any of the four bills mentioned above.

III. THE ENTRY INTO FORCE OF U.S.-PHILIPPINE VISITING FORCE AGREEMENT

The development of a closer military cooperation between the United States and the Philippines through the resumption of large-scale joint military exercises and/or through providing the country with military equipment could test the U.S. neutrality in the Spratlys/South China Sea territorial disputes. It has been Manila's position that the 1951 U.S.-Philippine Mutual Defense Treaty should be invoked if China attacks the Philippine military forces in the South China Sea.⁴⁵ However, the United States has held that Washington's commitment to the defense of the "metropolitan territory" of the Philippines under the treaty does not cover an attack on the Philippine armed forces in the disputed Spratly Islands in the South China Sea. In a January 1979 letter to the Philippine foreign secre-

43. For the introduced bill *H.R. 1908* (To authorize the transfer of naval vessels to certain foreign countries), visit the U.S. Congress' THOMAS World Wide Web system online at <<http://thomas.loc.gov>>.

44. For *H.R.2415* (To enhance security of United States missions and personnel overseas, to authorize appropriations for the Department of State for fiscal year 2000, and for other purposes.) and *H.R.3427* (To authorize appropriations for the Department of State for fiscal years 2000 and 2001; to provide for enhanced security at United States diplomatic facilities; to provide for certain arms control, nonproliferation, and other national security measures; to provide for reform of the United Nations, and for other purposes.), visit the U.S. Congress' THOMAS World Wide Web system online at <<http://thomas.loc.gov>>.

45. Article V of the 1951 Mutual Defense Treaty between the Republic of Philippines and the United States of America provides that "For the purpose of Article IV, an armed attack on either of the Parties is deemed to include an armed attack on the metropolitan territory of either of the Parties, or on the island territories under its jurisdiction in the Pacific or on its armed forces, public vessels or aircraft in the Pacific." For the text of the treaty, visit the Philippine Department of Foreign Affairs' home page at <<http://www.dfa.gov.ph/vfa/content/mdt.htm>>.

tary, the U.S. Secretary of State Cyrus Vance stated that an attack on the Philippine armed forces “would not have to occur within the metropolitan territory of the Philippines or island territories under its jurisdiction in the Pacific in order to come within the definition of Pacific area in Article V” of the 1951 Treaty.⁴⁶ In a paper appearing on *Orbis* in Spring 1999, the author stated that “[t]he United States has carefully avoided explicit statements of support for [the Philippine claims to the Spratly Islands], though Secretary of Defense William Cohen recently suggested that the U.S.-Philippines mutual defense treaty might apply to Philippine forces in the Spratly Islands.”⁴⁷ More recently, President Estrada said that U.S. President Clinton, during their talks on the sidelines of the APEC summit in New Zealand, pledged U.S. support in the event of any conflict over the Spratlys.⁴⁸

The defense and security relationships between the United States and the Philippines have been governed by a number of bilateral agreements, which include: the 1947 Military Assistance Agreement (MAA), the 1947 Military Bases Agreement (MBA), the 1951 Mutual Defense Treaty (MDT), the 1953 Mutual Assistance Agreement (MDAA), and the 1958 Serrano-Bohlen Memorandum of Agreement (MOA).⁴⁹ In 1991, the Philippine Senate rejected the extension of the 1947 MBA, which formalized the use of 23 installations in the Philippines by the U.S. military forces. As a result, the basing arrangements between Manila and Washington were terminated in 1992 and the last U.S. forces withdrew from the Philippine bases on November 24, 1992. While the 1947 MBA was terminated and the U.S. military forces completed withdrawal in 1992, the rest of bilateral defense arrangements between the two countries, particularly, the 1951 MDT, remained in force. Regular military exercises were still conducted between the Philippine and U.S. armed forces. The number of these military exercises ranged from 10 to 12 a year.⁵⁰ In 1995, for instance, the “Balikatan”, the biggest combined military exercise between the two countries, was

46. Cited in Larry A. Niksch, “The South China Sea Dispute,” CRS paper, 95-934 F, August 29, 1995, p. 6.

47. Phillip C. Saunders, “A Virtual Alliance for Asian Security,” *Orbis*, Spring 1999, note 30, p. 249.

48. “Cohen Discusses Military Ties, Spratlys, in Manila,” *Reuters*, October 3, 1999.

49. “The Philippines and United States Defense and Security Relations,” available at the Philippine Department of State’s home page <<http://www.dfa.gov.ph/vfa/content/primer.htm>>.

50. *Ibid.*

held.⁵¹ In addition, the assistance programs between United States and the Philippine continued. In July 1996, the United States, through its Agency for International Development, provided funding to help carry out a major airport and harbor project in General Santos City of the Philippines.⁵²

Large-scale military exercises between the United States and the Philippines were suspended at the end of 1996. The two countries agreed that military exercises would be resumed only after a formal agreement on the treatment of visiting U.S. defense and military personnel was signed between Manila and Washington. After two years of negotiations, the U.S.-Philippine Forces Visiting Agreement (VFA) was signed on February 10, 1998 by Philippine Foreign Secretary Domingo L. Siazon and U.S. Ambassador Thomas C. Hubbard.⁵³ The Philippine government submitted the VFA to the Philippine Senate for concurrence at the beginning of October 1998,⁵⁴ which later on drew a volatile and polarized political reactions in the Philippines.⁵⁵ On May 27, 1999, the Philippine

51. *Ibid.*

52. See U.S. Department of State's *Background Notes: Philippines, August 1999*, released by the Bureau of East Asian and Pacific Affairs. For the notes, visit the Department's home page at <http://www.state.gov/www/background_notes/pjilippines_0899_bgn.html>.

53. For the Agreement between the Government of the Republic of Philippines and the Government of the United States of America Regarding the Treatment of United States Armed Forces Visiting the Philippines," visit the Philippine Department of State's home page at <<http://www.dfa.gov/ph/vfa/connent/vfa.htm>>.

54. "Estrada Pushes for Military Accord with US," *Strait Times*, October 12, 1998.

55. For domestic debates in the Philippines, see, "VFA to Pave Way for US Meddling, Militants Warn," *The Philippine Daily Inquirer*, January 26, 1999; "Estrada: VFA Needed to Stop Chinese Buildup in Spratlys," *The Philippine Daily Inquirer*, February 1, 1999; "Saizon: Asia-Pacific Dynamics 'Hinges on US-Manila Defense Pact'," *Strait Times*, February 22, 1999; "Estrada Cites VFA Benefits, Gains New Support," *Manila Bulletin*, March 11, 1999; "Philippine Generals Air Support for VFA," *Manila Bulletin*, March 19, 1999; "Filipinos Stage Anti-VFA Picket in Brussels," *The Philippine Daily Inquirer*, April 18, 1999; "VFA Debate Starts Today," *The Manila Times*, May 3, 1999; "We Cannot, Must Not Accept VFA," *The Philippine Daily Inquirer*, May 16, 1999; "VFA Splits Negros Church," *The Philippine Daily Inquirer*, May 17, 1999; "Philippine's Leader Defends Policy," *The New York Times*, May 17, 1999; "Sin Appeals to Senators: reject VFA," *The Philippine Daily Inquirer*, May 18, 1999; "Int'l Group Throws Support Behind Junk VFA Movement," *The Philippine Daily Inquirer*, May 18, 1999; "Delay in vote Helping Anti-VFA Bloc," *The Philippine Daily Inquirer*, May 25, 1999; "Anti-VFA Petitions Swamp SC," *The Manila Times*, May 29, 1999; "SC Asked to Stop VFA Pact," *The Philippine Daily Inquirer*, May 29, 1999; "Estrada Confident SC Will Uphold VFA," *The Philippine Daily Inquirer*, May 30, 1999; and "VFA Approval paves Way for Expansion of Glan Port," *The Philippine Daily Inquirer*, May 30, 1999.

finally ratified the VFA.⁵⁶ Since the agreement was considered an executive agreement by the Clinton administration, there was no need for the U.S. Senate to give advice and consent. As a result of the entry into force of the VFA in May 1999, military exercises between the Philippine and U.S. armed forces resumed. In July 1999, the command ship of U.S. Seventh Fleet arrived in Manila on the first visit since the VFA entered into force in May 1999.⁵⁷ In October 1999, U.S. Defense Secretary William Cohen and his Philippine counterpart, Orlando Mercado, announced that experts from the two countries would meet to help establish Manila's needs in areas ranging from military defense to humanitarian missions by the armed forces.⁵⁸ It was also reported that the U.S. and the Philippines were to hold combined, joint military exercises in the South China Sea in early 2000.⁵⁹ In December 1999, a five-member delegation of military experts from the Philippines visited Washington and the submarine *USS Santa Fe* port-called Subic Bay.⁶⁰

The U.S. move to increase military cooperation with the Philippines made China worry about the future development in the Spratlys area. In the past, China had been asking to reduce the dominant role of the U.S. bilateral alliance with Japan, South Korea, Thailand, the Philippines and Australia, the five treaty allies of the United States in the Asia-Pacific region. China was of the opinion that the five mutual defense treaties the U.S. has with the five East Asian states are aimed at containing Beijing. Accordingly, China asserted that the said mutual defense treaty relationships should be abandoned and replaced by a broader cooperative security arrangement in region.

Recently, Beijing expressed its concerns over the holding of joint U.S.-Philippine military exercises in the area near the disputed

56. "Manila Senate Ratifies Pact with US," *The Strait Times*, May 28, 1999.

57. "U.S. Navy Back in Philippines after New Pact," *Reuters*, July 22, 1999.

58. "FOCUS — U.S. to Help Philippines Upgrade Military," *Reuters*, October 3, 1999; see also Department of Defense's News Briefing given in Manila on October 3, 1999, available at <http://www.defenselink.mil:80/news/Oct1999/t10041999_991003sd.html>.

59. The Exercise BALIKATAN 2000, a U.S.-Philippine combined, joint exercise, will be held in the Republic of Philippines between January 31 - March 3, 2000. For more information about the exercise, visit U.S. Pacific Command's home page at <http://usarpac.army.mil/docs/Balikatan00/BK_news_1.htm>.

60. "U.S. Navy Returns to the Philippines: Submarine Santa Fe Makes Quiet Visit," *The Washington Times*, December 31, 1999.

Spratly Islands.⁶¹ Later on China signified its desire to observe the announced U.S.-Philippine joint military exercises, to be held in early 2000 off the southwestern Philippine islands of Palawan close to the disputed Islands.⁶² In addition, China proposed the incorporation of a CBM into a regional code of conduct that was drafted by the Chinese side to be discussed with ASEAN in late October 1999. The proposal stated that the Chinese government and governments of the member states of ASEAN have agreed to "Refrain from conducting any military exercises directed against other countries in the Nansha (Spratly) Islands and their adjacent waters."⁶³

The signature and entry into force of the VFA was considered by the Philippines a big stride forward in its efforts to defend its island territories in the Spratlys area against the Chinese encroachment. Immediately after the ratification of the VFA, President Estrada addressed in public television, stressing that the VFA "would be a check on Chinese expansion in the South China Sea around the disputed Mischief Reef where the Chinese have built concrete structures."⁶⁴ A Philippine Senate report released in May 1999 also stated that "[b]y concurring in the agreement, the Senate will convey to any power harbouring hegemonic ambitions in the East Asian region that small countries like the Philippines are not entirely isolated and helpless in the face of expansionist designs."⁶⁵ It was also reported that the Philippines would receive navy and coastal guard ships, attack aircraft and helicopters from the United States because of the ratification of the VFA.⁶⁶ Despite the statement made by Admiral Dennis Blair, chief of the U.S. Pacific Command, in a Singapore forum on May 22, 1999 that the VFA is not a security "guarantee" for the Philippines,⁶⁷ Manila argues that it can always rely upon the 1951 US-Philippine MDT in case of an external attack. Thomas Hubbard, U.S. Ambassador to the Philippines,

61. "China Cautions against Philippine-US War Games near Spratlys," *Agence France-Presse*, August 4, 1999.

62. "China Wants to Watch Philippine Exercises-Manila," *Reuters*, October 28, 1999.

63. Paragraph 9 of the Chinese version of regional code of conduct in the South China Sea (A copy of the text of the code is on file with the author).

64. "Security: Growing Up: Manila's Military Pact with U.S. Signals New Maturity," *Far Eastern Economic Review*, June 3, 1999, p. 27.

65. "Manila Senate Ratifies Pact with US," *The Strait Times*, May 28, 1999.

66. "U.S. Vows to Upgrade R.P. Defense Arsenal," *Philippines News* (San Francisco, California), No. 41, June 2-8, 1999, p. A1.

67. "US Admiral's Statement sparks Strong Reactions," *The Philippine Daily Inquirer*, May 25, 1999.

backed the Philippine position by citing the letter that was sent by former U.S. State Secretary Cyrus Vance to the Philippine Foreign Secretary Carlos P. Romulo on January 6, 1979, in which the U.S. state secretary said that the United States would come to the aid of the Philippines if the later were attacked by a third party. In addition, the ambassador also said that U.S. Defense Secretary William Cohen further clarified the U.S. obligation under the MDT in August 1999.⁶⁸

It seems that not only the military relationships between the United States and the Philippine had steadily been improved, the military cooperation between the United States and its allies or friends in Southeast Asia, such as Singapore, Thailand, Indonesia, and Malaysia, had also been strengthened. In January 1998, the United States and Singapore announced a new agreement for U.S. aircraft carriers, submarines and other warships to use a planned \$35 million naval base at Changi for port visits and maintenance beginning in the year 2000.⁶⁹ In July 1999, the United States held combined bilateral military exercises with Singapore, Malaysia, Thailand, and Indonesia in the South China Sea, which involved detachments from the U.S. Seventh Fleet.⁷⁰ These developments confirm the U.S. security and strategic thinking, that is, bilateral treaty alliances and relationships, forward military presence, and participation in multilateral dialogues, are the three pillars of the U.S. security strategy for Asia. Based upon this security policy, Washington will not support initiatives that would either undermine the U.S. operational flexibility or constrain the U.S. military posture in Southeast Asia or the Asia-Pacific region. In addition, the U.S. participation in regional security fora must be built upon the foundation of solid bilateral alliances and security relationships and U.S. military forward presence in the region. Accordingly, the U.S. is committed to the maintenance of approximately 100,000 troops in the Asia-Pacific and the allocation of necessary resources in the U.S. long-term defense planning.

IV. THE ASIAN FINANCIAL CRISIS AND U.S. RESPONSE

The Asian financial crisis of 1997-1998 had profound implications for Southeast Asian security and the development of the terri-

68. *Ibid.*

69. "U.S. Carriers to Use Singapore Navy Base," *Reuters*, January 15, 1998.

70. "Singapore, US Hold Military Exercises in S. China Sea," *Kyodo World News Services*, July 12, 1999.

torial disputes in the Spratlys/South China Sea area. As noted in Chapter V, the development of military modernization programs by ASEAN member states, perhaps with the exception of Singapore, had been retarded by the economic, political, or social problems developed during the crisis. As a result, it became necessary for the affected countries to rely more on the U.S. military presence to help maintain regional stability and balance China's growing presence and influence in the region. The U.S. took the same position. As stated by U.S. under secretary of defense for policy Walter B. Slocombe in May 1998, "[s]ecurity is even more important in times when nations must take the tough decisions to surmount economic problems in times of easy prosperity." He continued, "[i]n this time of financial crisis in the region it is even more important for us to continue to recognize the stabilizing role that only America can play."⁷¹ Accordingly, the Under Secretary suggested that the U.S. should maintain the vitality of bilateral alliances and friendships with East Asian nations; maintain America's forward presence in the region to ensure stability; promote a stable, sound, lasting relationship with China. The U.S. should also seize the opportunities offered by multilateral fora — organizations like the ARF and the Northeast Asian Cooperation Dialogue — which advance transparency, resolve tensions, and improve confidence between regional powers.⁷² The need to increase reliance on the U.S. military presence, as the ASEAN states perceived, and the necessity to maintain the vitality of bilateral alliances and friendly relationships, as suggested by the under secretary of defense, were reflected in those bilateral military cooperative activities carried out in 1999 between the United States and the Philippines, Thailand, Singapore, Malaysia, and Indonesia, as noted in Section III of this chapter.

The biggest U.S. concern during the Asian financial crisis was the potential impact of the economic hardship confronting Thailand, Indonesia, and to a lesser extent Malaysia and the Philippines on regional stability. In particular, the United States was concerned about the continued coherence and viability and activism of ASEAN, which "has begun to play a significant geopolitical role and in so doing has emerged as a major force for stability in the region". ASEAN's leadership in helping maintain peace and stabil-

71. See the Statement of Walter B. Slocombe, Under Secretary of Defense for Policy before a hearing of the House Committee on International Relations Subcommittee on Asia and Pacific, May 7, 1998. Available at the State Department's PDQ home page <<http://pdq.state.gov>>.

72. *Ibid.*

ity in Southeast Asia was demonstrated in its efforts to help draft the Paris Peace Accords, to moderate tensions in the South China Sea, to form the APEC and ARF, and to resolve the crisis in Cambodia. The progress that ASEAN made in establishing itself as an effective regional forum, however, could be obstructed by the Asian financial crisis. More importantly, regional stability could suffer from an erosion of ASEAN leadership, resulting from key ASEAN member states' turning inward because of economic hardship they encountered during the financial crisis or because of inter-ASEAN tensions over financial crisis-inspired problems such as refugees and/or economic migrants rise.⁷³

In recognition of the importance of Indonesia as a major player in ASEAN and its vital and constructive role in regional affairs,⁷⁴ the United States decided to help the Indonesian economy recovery by supporting the additional IMF assistance to that country and pledging over \$100 million in food and medical supplies for Indonesia.⁷⁵ The United States also provided resources to the IMF, the World Bank and the Asian Development Bank to help Asian economies recover.⁷⁶ In addition, the United States called for financial reform, opening markets, improvement of transparency in investment, commitment to liberal trade, the avoidance of raising tariffs and barriers, and resumption of export led growth, which, Washington believed, were specific steps for restoring confidence and stability to the region's economies.⁷⁷ In 1999, the concern that the crisis would spread and produce instability that would undermine security and political relationship in the region dissipated with the grad-

73. See the statement of Stanley O. Roth, Assistant Secretary for East Asian and Pacific Affairs, U.S. State Department, before the Subcommittee on East Asian and Pacific Affairs of the House Foreign Relations Committee, May 7, 1998, Washington, D.C.

74. Indonesia was a founding member of the ASEAN. It helped found the ARF, which meets annually to discuss security issues. Indonesia is a key supporter of the APEC. It also supported U.S. efforts to complete negotiation of a Comprehensive Test Ban Treaty and supported a consensus decision in 1995 that extended indefinitely the Treaty on the Non-Proliferation of Nuclear Weapons. It also has sponsored workshops to help resolve longstanding territorial disputes in the South China Sea.

75. See Intervention of Secretary Albright at the ASEAN Regional Forum plenary, held in Manila, Philippines, on July 27, 1998. The text is available at *U.S. Department of State Dispatch*, August 1998, p. 3.

76. See Remarks by Secretary of State Madeleine K. Albright to the American Chamber of commerce at the Manila Hotel, Manila, the Philippines, on July 29, 1998.

77. See Intervention of Secretary Albright at the ASEAN Post-Ministerial Conference, held in Manila, Philippines, on July 27, 1998. For the text, visit the US Department of State's home page at <<http://www.usia.gov/regional/ea/easec/albsean2.htm>>.

ual dying out of the Asian financial crisis. As U.S. Secretary of State Madeleine K. Albright stated at the Sixth ARF meeting,

. . . in the realm of security, we can be thankful that our fears have not been realized. In fact, one effect of the crisis has actually been constructive. The changes in government that may be traced, at least in part, to economic disruptions have been generally positive. As a rule, the new government in our region has shown a deeper understanding and commitment to financial transparency, political openness and democratic principles than their predecessors.⁷⁸

During the Asian financial crisis, China decided not to devalue its currencies and contributed \$1 billion to the International Monetary Fund's rescue package for Thailand — a package to which the United States opted not to contribute outside its IMF commitment.⁷⁹ China's performance during the Asian financial crisis won thanks from the ASEAN member states, which made it difficult for the non-claimant countries to the Spratly Islands, such as Thailand and Indonesia, to take a common stand with their fellow member states, to challenge or react strongly to the Chinese expansion moves in the Spratlys area. Ironically, while considering it important to restore ASEAN's leadership and to help the organization move a step further as an effective regional forum in dealing with major regional security issues, the United States failed to help the ASEAN or the ARF overcome the difficulty it encountered with respect to bring attention to bear on security issues such as the South China Sea. Moreover, the increase of China's presence and influence in Southeast Asia after the Asian financial crisis made it more difficult for the United States to disregard or not compromise with Beijing's position on the South China Sea issues.

V. U.S. PARTICIPATION IN REGIONAL SECURITY FORA

In recognition of the growing importance of ASEAN, the United States has been engaging in bilateral dialogues with ASEAN, in particular, at the ASEAN Post-Ministerial Confer-

78. See Intervention of Secretary of State Madeleine K. Albright at the Sixth ARF, held in Singapore, July 26, 1999. For the text, see U.S. Department of State's home page at <<http://secretary.gov/www/statements/1999/990726.html>>.

79. Ben Dolven and Lorient Holland, "Softly, Softly," *Far Eastern Economic Review*, June 10, 1999, p. 29.

ences. While the United States had never been invited to participate in the Indonesian-sponsored informal workshop on South China Sea issues, Washington continued to give its strong support for holding such workshop meetings in different cities of Indonesia. More importantly, the United States actively participated in the ARF and the ARF Intersessional Support Group on Confidence Building Measures and other related meetings. The United States considers the ARF the most important multilateral mechanism exclusively dealing with security issues in the region. The ISG on CBMs is the most active of the ARF's intersessional working groups and its meetings form the core of the ARF's overall work program. The result of the ISG's deliberations form the basis of the agenda for the ARF's annual meeting held in summer of the year that foreign ministers and defense officials of the participating countries attend. The United States has played an active and supportive role in the ARF since its inception in 1994.

In May and July 1998, the United States exchanged views with ASEAN at the 14th US-ASEAN Dialogue and the ASEAN Post-Ministerial Conference, in which the two sides discussed a variety of issues of mutual concern. Although the United States and ASEAN exchanged views on regional security issues, such as the development in Cambodia, the situation in the Korean Peninsula, nonproliferation of nuclear weapons, and the Kosovo problem at the 14th US-ASEAN Dialogue, there was no discussion on the South China Sea issues.⁸⁰ The major issues discussed at the ASEAN Post-Ministerial Conference on July 28, 1998 were the Asian financial crisis and the U.S. policy on and response to the crisis. The South China Sea territorial sea disputes were not mentioned in U.S. Secretary of State's statement at the conference.⁸¹ The South China Sea issues were not discussed at either the ASEAN Post-Ministerial Conference held July 26, 1999, in Singapore, nor the ASEAN Post-Ministerial Conference's 10+1 session, held in Singapore July 27, 1999.⁸²

80. See Press Statement, 14th US-ASEAN Dialogue, Manila, Philippines, May 23-24, 1998. Available in ASEAN's official web site at <<http://www.aseansec.org/dialog/prus14.htm>>.

81. Intervention by Secretary of State Albright at the ASEAN-Post-Ministerial Conference. Available in ASEAN's official web site at <<http://www.aseansec.org/amm/pmc31osu.htm>>.

82. See Intervention by Secretary of State Albright at the ASEAN-Post-Ministerial Conference, Singapore, July 26, 1999, available in ASEAN's official web site at <<http://www.aseansec.org/amm/pmc31osu.htm>>; and Opening remarks by Secretary of State

Despite China's objection, the South China Sea issues had been included in the agenda, and discussed by all of the participants in the ARF meetings. The United States considers the ARF the first broadly based consultative body in Asia concerned exclusively with security issues. ARF's annual meetings have provided "a mechanism through which members are cultivating important habits of consultation and slowly building trust."⁸³ Since the first ARF meeting held in Bangkok, Thailand in July 1994, Washington has been asserting that the ARF should address the South China Sea issues.

The U.S. position on participating in this important regional multilateral security mechanism was elaborated clearly in a speech given by Assistant Secretary Stanley O. Roth of State Department at Henry L. Stimson Center on July 21, 1998. Roth considered the former Chinese foreign minister Qian Qichen's declaration of China's intent to pursue a peaceful resolution to the South China Sea disputes in accordance with the 1982 LOSC the most remarkable achievement of the 2nd ARF meeting held in Brunei in July 1995. Since then, according to Roth, the ARF had made considerable progress in four distinct areas. First, the U.S. and other like-minded states were able to promote a greater role for defense officials in ARF proceedings. Second, progress had been made in terms of advancing cooperative actions among senior officials from a wide range of ministries. Third, China was included in the process discussing security issues and gradually was integrated into the region. Finally, more countries in the region were banging on ARF's door to be admitted.⁸⁴

As far as the future development of the ARF is concerned, Roth suggested that the ARF had to move from stage one (discussing CBMs) to stage two (discussing preventive diplomacy). In this regard, Roth argued, "in many ways the South China Sea disputes are tailor-made for preventive diplomacy; no country in the region currently possesses the military capacity to impose its claims, and no claimants has yet discovered commercially viable quantities of oil or gas." "Thus if the political will to reach a negotiated settlement can be generated," Roth continued, "a window of opportunity

Madeleine K. Albright at ASEAN Post Ministerial Conference 10+1 Meeting, available at <<http://www.aseansec.org/amm/pmc32dul.htm>>.

83. "Multilateral Approaches to Regional Security," a talk presented by Stanley O. Roth at Henry Stimson Center on July 21, 1998. For the transcript of the talk, visit the U.S. Department of State's home page at <<http://pdq.state.gov>>.

84. *Ibid.*

may exist in which to find a 'win-win' solution." In short, Roth believed that the South China Sea was the area where preventive diplomacy could make a serious contribution to the region's stability and security. In addition, Roth suggested, ASEAN would have to relinquish some of its control over the ARF, given the fact that the ARF's non-ASEAN members outnumbered its ASEAN creators. The Assistant Secretary further suggested that some means must be devised to reflect the changing composition of participating states in ARF, "perhaps by permitting an equitable sharing of the privileges and responsibilities of the chairmanship."⁸⁵ Moreover, Roth was of the opinion that the forum needed to become more institutionalized. "The ARF needs a permanent clearing house or some types of secretariat to track, coordinate, and record the ARF's work," he said. Finally, if the ARF were to evolve into an effective regional multilateral security mechanism, Roth argued, the participating states had to be prepared to surrender a degree of sovereignty for the greater good. "[T]he project of preventing conflicts and resolving disputes that threaten the peace and stability of the community at large requires a willingness to submit to a process of mediation, which by definition would imply a loss of unilateral control."⁸⁶

The United States participated in the ARF Intersessional Meeting on Disaster Relief, held in Bangkok, Thailand, on February 18-20, 1998, and also participated in the meeting of the ARF Intersessional Support Group on Confidence Building Measures (ISG on CBMs), held in Sydney, Australia, on March 4-6, 1998. In addition to discussion on matters relating to confidence building, the two ISG on CBMs meetings also included two new topics in the discussing list, namely CBMs/preventive diplomacy and maritime issues. On the South China Sea issues, the ISG on CBMs welcomed the efforts by countries concerned to seek solutions by peaceful means in accordance with international law and the continued exercise of self-restraint in the interest of maintaining peace and stability in the Spratlys/South China Sea area. The participants in the ISG on CBMs took notes the positive contributions made by bilateral consultations between concerned parties and the exchange of views on the South China Sea issues in the ASEAN-China Senior Officials Consultations and in the ARF. The participants also noted

85. *Ibid.*

86. *Ibid.*

the work of the Indonesian-sponsored informal workshop on managing potential conflicts in the South China Sea.⁸⁷

On July 27, 1998, the United States participated in the 5th ARF annual meeting held in Manila, Philippines. There U.S. Secretary of State Madeleine K. Albright expressed the U.S. strong support for Mongolia's membership in the ARF. In addition, the Secretary urged,

In the coming year, the ARF should continue to develop along the evolutionary path we laid out in 1995: from confidence building, to preventive diplomacy to an active role in resolving conflicts. We should take the next steps in this process by exploring the overlap between confidence building and preventive diplomacy. While the confidence building foundations must be solid, the ARF must also move forward if it is to remain vital and relevant.⁸⁸

A number of security issues of U.S. concern, including nuclear testing in India and Pakistan, the problems in Korean Peninsula and Cambodia, were mentioned in the Secretary's intervention at the ARF plenary meeting. But, there was no mentioning of the South China Sea issues. It was at the 6th ARF annual meeting held in Singapore on July 26, 1999 that Secretary Albright expressed publicly the U.S. increasing concern over the South China Sea issues, as noted in Section II of this chapter.

In November 1998 and March 1999, the United States participated in the ISG on CBMs held in Honolulu, USA and Bangkok, Thailand, respectively. Perhaps because of the discovery of Chinese expansion of the structures built on Mischief Reef in November 1998 and the rising tensions between the Philippines and China in the disputed Spratlys area, the South China Sea issues dominated discussion during the exchange of views on regional security perceptions at the 1998-1999 meetings of ARF ISG on CBMs.⁸⁹ Paragraph 27 of the Co-chairmen's Summary Report of the Meetings of

87. For Co-chairmen's summary report of the meetings of the ARF ISG on CBMs held in Bandar Seri Begawan, Brunei Darussalam on November 4-6, 1997 and in Sydney, Australia on March 4-6, 1998, visit ASEAN's official web site at <<http://www.aseansec.org/politics/arf5xc.htm>>.

88. For the Secretary's Intervention at the ASEAN Regional Forum Plenary held in Manila, Philippines on July 27, 1998, visit the U.S. Department of State's home page at <<http://secretary.state.gov/www/statements/1998/980727a.html>>.

89. See Report of the 1998-1999 Meetings of the ARF ISG on CSBMs, in Australian Department of Foreign Affairs & Trade's home page at <http://www.dfat.gov.au/arf/arf5_C.html>.

the ARF Intersessional Support Group on Confidence Building Measures wrote,

The ISG welcomed the commitment of all the countries concerned to the peaceful settlement of the dispute on the South China Sea, in accordance with recognized principles of international law, including the UNCLOS. The ISG further noted the bilateral consultations between the countries concerned, the dialogue in the ASEAN China Senior Officials Consultations and . . . the continuing work of the Informal workshop on Managing Potential Conflicts in the South China Sea. Some members of the ISG expressed strong concerns about certain recent developments. The ISG took note of different views expressed and expressed the hope that a meeting of experts on confidence building measures between China and the Philippines and the ASEAN-China SOM will result in mutual understanding and constructive dialogue.⁹⁰

The ISG participants also had extensive exchange of views on, and consideration of, the four proposals outlined in a working paper presented by the delegation from Thailand, which would assist parties to a dispute, to resolve differences before they affect other ARF members. The four Thai proposals are: an enhanced role for the ARF Chairman, in particular the idea of establishing a “good offices” role for the ARF Chairman; the development of a register of experts or Eminent Persons among ARF participants; Annual Security Outlook; and voluntary background briefing on regional security issues.⁹¹ These four proposals, along with others, were conveyed to the ASEAN Senior Officials Meeting held in Singapore in May 1999 and then were considered by foreign ministers at 6th ARF meeting held in July 1999. The United States co-chaired the 1998-1999 meetings of the ARF ISG on CBMS and therefore participated actively in the process.

Indeed, “the United States is a strong supporter of the ASEAN Regional Forum,” as stated by U.S. State Secretary Albright at the 6th ARF meeting. It is the U.S. belief that the ARF provides the participating countries with an indispensable means to consult and cooperate wherever possible on matters of shared security concern. The Secretary also expressed the U.S. support for

90. For the Summary Report, visit the ASEAN's official web site at <<http://www.aseansec.org/politics/arf6a.htm>>.

91. *Ibid.*

the idea of establishing a “good offices” role for the ARF, so that ARF’s members to a dispute could call on the Chairman for assistance. Secretary Albright also stated that Washington supported the proposal regarding voluntary background briefing on regional security issues. As far as the future direction of the ARF is concerned, the United States believed that the number of participating countries in ARF should be kept at 22, unless North Korea decided to reapply for admission. This is because the ARF’s membership already risked becoming unwieldy. The United States believed that aside from North Korea, no other appropriate applicants existed within the East Asia/Oceania region.⁹² The United States hoped that the ISG on CBMs continued to consider the idea of establishing an “ARFNET” system, which could help speed up communication process and make distribution of materials more quickly. The United States believed that some form of institutional structure would also be needed as the ARF matures.

VI. U.S.-CHINA RELATIONS

The U.S.-China relations have been one of the major factors affecting U.S. policy-making process in relation to the sovereignty and maritime jurisdictional disputes in the Spratlys/South China Sea area. The United States doesn’t regard China as a threat to peace and stability in Southeast Asia and the Asia-Pacific region, despite its expanding military power and territorial disputes with member states of the ASEAN. Instead, the United States considers U.S.-China relations a key to security and stability in the Asia-Pacific region. Based upon the Clinton Administration’s commitment to the policy of purposeful and principled engagement with China and the recent developments of China’s South China Sea policy, it is unlikely for the United States to take a stronger position to respond to China’s behavior in the Spratly/South China Sea area. It is also unlikely for the United States to adopt a stronger policy measures to back ASEAN states’ claim to the disputed islands in the South China Sea.

The 1995 U.S. State Department’s statement on the Spratlys/South China Sea asserts that maintaining freedom of navigation is a fundamental interest of the United States.⁹³ In response to this U.S.

92. *Ibid.*

93. Spratlys and the South China Sea, Statement by Christine Shelly, Acting Spokesman, May 10, 1995. The statement can be found in U.S. Interest in Southeast Asia, *Hearing* before the Subcommittees on International Economic Policy and Trade and Asia and the Pacific of the Committee on International Relations, House of Repre-

policy concern, China has been continuously making assurances that there will always be freedom of navigation in the Spratlys/South China Sea area. The assurance was given by the former Chinese foreign minister Qian Qichen at the second ARF annual meeting held in Brunei in July 1995. China's ambassador to the Philippines, Fu Ying, for instance, stated in May 1999 that "[f]reedom of navigation and safety of navigation in the [South China Sea] area is in the interest of China, the United States and the Philippines,"⁹⁴ and therefore, Beijing could guarantee navigating rights in the contested region.

The 1995 U.S. State Department's statement on the Spratlys/South China Sea also states that the U.S. has an abiding interest in the maintenance of peace and stability in the South China Sea. Therefore, the United States calls upon the countries concerned to intensify diplomatic efforts which address issues related to the conflicting claims in the Spratlys/South China Sea area. In addition, the United States makes it clear that it strongly opposes the use or threat of force to resolve territorial disputes and urges all claimants to exercise restraint and to avoid destabilizing actions. Moreover, the United States would view with serious concern any maritime claim, or restriction on maritime activity, in the Spratlys/South China Sea area that was not consistent with international law, including the 1982 LOSC.⁹⁵ Again, in response, China has been advocating the exact same policy measures to help govern the claimants' behavior in the contested area since 1995. For instance, the principle of peaceful settlement of disputes in the South China Sea was reaffirmed at the highest level during the meeting between the heads of state/government of ASEAN member countries and the president of China. The ASEAN-China Joint Statement issued after the December 1997 meeting announced that the claimant countries had agreed to resolve their disputes in the South China Sea through friendly consultations and negotiations in accordance with universally recognized international law. While continuing efforts to find solutions to the dispute, the concerned countries also agreed to exercise self-restraint and to explore ways for cooperation in the

sentatives, 104th Congress, 2nd Session, May 30 and June 19, 1996 (Washington, D.C.: GPO, 1997), p. 157.

94. "China Assures Freedom of Navigation in Spratlys: Ambassador," *Agency France-Presse*, May 17, 1999; and "Beijing: Feel Free to Cross S. China," *The Strait Times*, May 18, 1999.

95. Spratlys and the South China Sea, Statement by Christine Shelly, Acting Spokesman, May 10, 1995, *supra* note 93.

South China Sea. China reiterated the same position at the ASEAN-China Senior Officials Consultations, the ASEAN Post Ministerial Meeting, the ARF annual meeting, the ASEAN-China dialogue, or at the bilateral consultations between China and the claimant countries in 1998 and 1999.

During the 1997-1998 Asian financial crisis, China persisted in not devaluing its currencies, contributed about US\$4 billion as aid to the Operational Budget of the IMF, and provided additional assistance to the suffered countries in the region. China's "responsible behavior" during the crisis made a positive contribution to stabilizing the Asian economy. In addition, the Chinese performance in facing up to the challenge of the Asian financial crisis not only helped Beijing win thanks from the ASEAN states, but also helped it earn credits for supporting what China has been saying that it "will be a staunch force in maintaining regional and global peace and stability and a positive factor promoting common development."⁹⁶ As a result, there has not been much motivation for the United States to take a strong position, as it did in 1995, to check China's behavior in the Spratlys/South China Sea area or back Southeast Asian claims. It becomes clear that since 1999, the U.S. and ASEAN states' strategy for handling the South China Sea territorial disputes has been to bring China into multilateral groups like the AFR or the ASEAN-China dialogue to deal with points of disputes. In addition, the ASEAN states have become more inclined to accommodate Beijing's behavior in the area than to antagonize it, as they did in 1992⁹⁷ and 1995⁹⁸.

Aside from the "responsible attitude" of China in dealing with the South China Sea issues, it should also be noted that the U.S.

96. See address by Tang Jiaxuan, China's Minister for Foreign Affairs at the 5th ARF ministerial meeting. For the text of the address, visit ASEAN's official web site at <<http://www.asean.or.id/amm/arf31osp.htm>>.

97. In 1992, a Declaration on the South China Sea was adopted at 25th ASEAN Ministerial Meeting, in which the foreign ministers emphasized "the necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force" and urged "all parties concerned to exercise restraint with the view to creating a positive climate for the eventual resolution of all disputes." For the Declaration, see Joint Communique, Twenty-fifth Ministerial Meeting, Manila, July 21-22, 1992, printed in *ASEAN Economic Bulletin*, Vol. 9, No. 2, November 1992, pp. 235-236.

98. In March 1995, mainly in response to the increasing tensions found in the South China Sea, the ASEAN issued a joint statement, calling for peaceful settlement of territorial disputes in the region. For the Statement by the ASEAN Foreign Ministers on the Recent Development in the South China Sea, March 18, 1995, visit the ASEAN web site at <<http://www.asean.or.id/politics/scs95.htm>>.

policy-making process in relation to the territorial and jurisdictional disputes in the Spratlys/South China Sea area had been influenced to a large degree by the Clinton administration's comprehensive engagement policy with China. In fact, the Philippines was worrying about the development of the U.S.-China strategic partnership and its implications on the territorial disputes in the Spratlys area. According to the Philippine government-owned *Journal's* editorial, if the U.S.-China strategic partnership were to extend to Spratlys/South China Sea area, the Philippines would be forced to say good bye to the Kalayaan sea, where most of the Spratly Islands group are scatter around.⁹⁹ It was also reported that the Clinton administration has avoided getting involved in the South China Sea territorial disputed or taking a stronger position in reacting to China's actions in the Spratlys area for fear of upsetting relations with Beijing.¹⁰⁰

In recognition of the fact that peace and stability in the Asia-Pacific region can hardly be ensured or achieved without China's active participation, and that China has an important role in the evolving security architecture of the Asia-Pacific region and the development of multilateral institutions, the United States adopted a policy of comprehensive engagement with China in late 1996. The U.S.-China relations, particularly in the security realm, began to grow after the October 1997 summit between Presidents Clinton and Jiang Zemin held in Washington, D.C.¹⁰¹ The military leaders of the United States and China frequently exchanged visits, and maintained continuous and high-level contacts. A series of military consultative mechanisms between the two countries were established. Exchanges in the fields of military training, logistics, military academic, military history and justice were also carried out. In addition, Washington and Beijing agreed to enhance international cooperation in the military field.¹⁰² The Agreement Between the Department of Defense of the United States and the Ministry of National Defense of the People's Republic of China Establishing a

99. "Strategic Partnership Continues," *Philippine Journal*, March 4, 1999.

100. Bill Gertz, "China Makes Upgrades to Islands Base, Coastline," *The Washington Times*, February 11, 1999.

101. A joint statement following the talks between visiting Chinese President Jiang Zemin and U.S. President Bill Clinton was issued. For the text of the joint statement, see "Sino-US Joint Statement," *Beijing Review*, November 17-23, 1997, pp. 7-9.

102. For China-U.S. military exchanges and agreements reached since the visit by Chinese Defense Minister General Chi Haotian to the U.S. in December 1996, visit New York University's home page Global Beat at <<http://www.nyu.edu/globalbeat/asia/06021998chnembassy.html>>.

Consultation Mechanism to Strengthen Military Maritime Safety¹⁰³ was signed by William Cohen and his Chinese counterpart General Chi Haotian during the U.S. Defense Secretary's visit to China in January 1998. The main purpose for signing the agreement was to avoid accidents, misunderstandings, or miscalculations between the two sides' naval and air forces.¹⁰⁴ The U.S.-China relations went a step further after the June 1998 summit between Presidents Clinton and Jiang Zemin held in Beijing. The agreements, reached between Washington and Beijing, were built on the achievements of the October 1997 summit, and have deepened cooperation between the two countries on a broad range of issues. In the security realm, Washington and Beijing agreed not to target strategic nuclear weapons at one another. A direct presidential communication link was established, which provides an important conduit for consultation on global, regional and bilateral issues. Meetings under the auspices of the Military Maritime Consultative Agreement, aimed at promoting safety in naval and air operations, and avoiding incidents at sea, were to be held annually. The two countries also agreed to consult on the Missile Technology Control Regime and missile nonproliferation issues, to further strengthen controls on the export of dual-use chemicals and related production equipment and technology, to end the export and indiscriminate use of anti-personnel landmines and to accelerating global humanitarian de-mining,

103. For the agreement, see Chen Hurng Yu, ed., *Compilation of Security Treaties, Agreements and Statements of Asia-Pacific* (Taipei: Taiwan Research Research Institute, 1999), pp. 47-49.

104. The U.S.S. *Kitty Hawk* incident occurred in October 1994 was considered the catalyst for signing the agreement. Beginning on October 27, 1994, U.S.S. *Kitty Hawk*, the U.S. aircraft carrier, was involved in a rare three-day encounter with a Chinese *Han-class* nuclear attack submarine in the Yellow Sea, some 100 nautical miles west of Kyushu, Japan and — according to the U.S. — in international waters. U.S. anti-submarine aircraft spotted the Chinese sub about 450 nautical miles northwest of the *Kitty Hawk*, and continued to track it. The Chinese dispatched jet fighters which intercepted the U.S. planes. No shots were fired — but there was no communication between the two forces. The cat-and-mouse game continued as the sub came to within 21 miles of the *Kitty Hawk*, then ended when the Chinese submarine returned to base. For the story, see Patrick Cockburn, "China," *Independent*, December 16, 1994, p. 14; Eugene Moosa, "Japan Experts Fret over Possible Taiwan 'Accident'," *Reuters*, March 18, 1996; Jim Mann and Art Pine, "High Seas Square-Off U.S. Carrier, China Sub Stalk Each Other in Asian Waters," *Newsday*, December 14, 1994, p. A4; Barbara Slavin, "Timely Look at How 'Conflict' could shake Up China and U.S.," *USA Today*, February 27, 1997, p. 6D; Lin Chong-Pin, "Red Army (Chinese Military Buildup)," *The New Republic*, November 20, 1995, p. 28.

on practices for end-use visits on U.S. high technology exports to China, and others.¹⁰⁵

Since the June 1998 summit, both the United States and China have embarked on a series of measured steps, aimed at achieving increasingly higher levels of mutual confidence and understanding. The steps taken include a series of mutual naval port visits, exchange visits by top military leaders, and working level talks and meetings.¹⁰⁶ In May 1999, however, China suspended port calls to Hong Kong by U.S. navy ships, which signaled further deterioration in U.S.-China relations following the bombing of China's Belgrade embassy on May 7 that year.¹⁰⁷ In August 1999, China granted *USNS Tippecanoe*, a U.S. support ship delivering fuel to warships at sea, permission to visit Hong Kong, but rejected port calls requested by two U.S. warships.¹⁰⁸ On October 31, the destroyer *USS O'Brien* called at Hong Kong's port. In early November 1999, the Chinese officials indicated that they were ready to resume U.S.-China military ties.¹⁰⁹ On February 8, 2000, the U.S. *Stennis* navy battle group, including seven ships, submarines and 71 aircraft, docked in Hong Kong, which is the biggest port call since NATO bombed China's embassy in Belgrade in May 1999.¹¹⁰

The grand strategy of the Clinton administration's policy regarding comprehensive engagement with China is "to facilitate the emergence of a China that is stable and non-aggressive; that cooperates with [the U.S.] to build a secure regional and international order; that adheres to international rules of conduct; that has an open and vibrant economy; and that works to protect the global environment."¹¹¹ This strategy was further elaborated in a major

105. For the agreements reached during the summit, see "Achievements of U.S.-China Summit," *White House Fact Sheet*, June 29, 1998, available in New York University's home page Global Beat at <<http://www.nyu.edu/globalbeat/asia/usia062998.html>>.

106. For activities of these visits or consultative talks, see Capt. Brad Kaplan, USN, "China and U.S.: Building Military Relations," available in U.S. Pacific Command's home page at <<http://www/pacom.mil/forum/summer99web/china-us.html>>.

107. Michael Laris and Steven Mufson, "End of Port Calls Hurts China Ties: Hong Kong visits Reduced 'Mistrust'," *The Washington Post*, May 22, 1999, p. A13.

108. "China allows U.S. Naval vessel to Visit H.K.," *Kyodo World News Service*, August 16, 1999.

109. John Pomfret, "U.S. and China Near Agreement on Military Ties; Visit to Washington Planned for High-Ranking Army Officer," *The Washington Post*, November 4, 1999, p. A25.

110. "US Sailors Take Leave in Hong Kong," *Associated Press*, February 8, 2000.

111. Testimony of Stanley O. Roth, Assistant Secretary of State for East Asian and Pacific Affairs before the House International Relations Committee, Asia and the Pacific Subcommittee, February 10, 1999. For the text of the testimony, visit the U.S. In-

foreign policy speech give by President Clinton himself in April 1999, in which he said:

Our long-term strategy must to encourage the right kind of development in China — to help China grow at home into a strong, prosperous and open society, coming together, not falling apart; to integrate China into the institutions that promote global norms on proliferation, trade, the environment, and human rights. We must build on opportunities for cooperation with China where we agree, even as we strongly defend our interests and values where we disagree. That is the purpose of engagement. Not to insulate our relationship from the consequences of Chinese actions, but to use our relationship to influence China's actions in a way that advances our values and our interests.¹¹²

The U.S.-China strategic partnership built upon the Clinton administration's comprehensive engagement policy with China had temporarily been affected by the May 7, 1999 bombing of the Chinese embassy in Belgrade. Nevertheless, President Clinton still pledged to maintain his engagement policy with China. He also stressed that both Washington and Beijing had strong common interests in maintaining stability in the Asia-Pacific region, including such potential flash points as the Korean Peninsula, the Taiwan Strait, and the Spratly Islands. As asserted by Assistant Secretary Stanley Roth in late May 1999 that despite strains in the relationships resulting from the bombing of the Chinese embassy in Belgrade, the United States needed to continue discussions with China about the importance of reducing tensions across the Taiwan Strait, as well as potential areas of conflict in the Asia-Pacific region, such as the South China Sea.¹¹³ The U.S. government's commitment to its policy of comprehensive engagement with China was reiterated in State Secretary Albright's intervention at the 6th ARF annual meeting. The Secre-

formation Agency's home page at <<http://www.usia.gov/regional/ea/easec/roth210.htm>>.

112. President Clinton's speech on U.S. policy toward China, given on April 7, 1999 at Mayflower Hotel, Washington, D.C. for the text of his speech, visit the U.S. State Department's home page at <<http://pdq.state.gov>>.

113. "The Effects on U.S. -China Relations of the Accidental Bombing of the Chinese Embassy in Belgrade," testimony of Stanley O. Roth, Assistant Secretary of State for East Asian and Pacific Affairs, before the Senate Committee on Foreign Relations Subcommittee on East Asian and Pacific Affairs, May 27, 1999. For the text of the remarks, visit the U.S. State Department's home page at <<http://pdq.state.gov>>.

tary stated that the U.S.-China relation is a key to the Asia-Pacific's future. The United States "is strongly committed to its policy of purposeful and principled engagement with China." She continued, "[t]his approach serves the interests of both our countries and of the region, as a whole."¹¹⁴ In August 1999, Assistant Secretary Stanley Roth further commented on the U.S. policy toward China. He emphasized that the rationale for U.S.-China relations and for comprehensive engagement policy remained as firm as it had been at the time of the exchange of state visits in 1997-1998. Because the development of this kind of bilateral relationship between the two countries would have important impact on the state of peace and stability in the Asia-Pacific region, the United States was determined "to try to press ahead and get back on track with [the U.S.] engagement policy and move towards the constructive strategic partnership that Presidents Clinton and Jiang talked about in the fall of 1997."¹¹⁵ The same position was restated in the report entitled "A National Security Strategy for a New Century," which was submitted in accordance with Section 603 of the Goldwater-Nichols Defense Department Reorganization Act of 1986 by the White House in December 1999.¹¹⁶

It should be noted that the U.S. state and defense departments' officials, when encounter aggressive Chinese acts taken in the Spratlys/South China Sea area, such as the expansion of the built structures on the disputed Mischief Reef in October 1998 and therefore must respond to that challenges, cannot but consider the possible impact of that response on U.S.-China relations. As a result, the best strategy for them is to follow those principles outlined in the 1995 State Department's statement. In fact, these principles are considered pretty much consistent with the guidelines set in the Clinton administration's China policy regarding how to engage Beijing in regional or international security affairs.

114. For the text of the Secretary's intervention, see *U.S. Department of State Dispatch*, Vol. 10, No. 7, August/September 1999, pp. 3-6.

115. Address presented by Assistant Secretary of State Stanley O. Roth, Bureau of East Asian and Pacific Affairs, U.S. Department of State, at National Press Club on August 26, 1999. For the text of the address, visit the U.S. State Department's home page at <<http://pdq.state.gov>>.

116. A National Security Strategy for a New Century, a report prepared and submitted by the White House, December 1999. The report was released by Office of the Press Secretary, The White House, January 5, 2000. For the report, visit the U.S. Department of State's home page at <<http://www.usia.gov/ea/easec/natsec2k.htm>>.

VII. POLICY RECOMMENDATIONS OFFERED BY U.S. SCHOLARS

A number of policy recommendations have been proposed by scholars in the American academic circuit to help mold a sound U.S. policy toward the Spratly Islands and the South China Sea. These recommendations, together with those reports concerning the South China Sea territorial disputes appeared on the U.S. and global mass media, entered into the conversion stage of U.S. policy-making process and were considered by the U.S. governmental officials who were in charge of East Asia and Pacific affairs. The suggested policy recommendations might be considered favorably or ignored by the administration. In any case, however, it should be noted that policy recommendations from scholars, particularly members in the U.S. policy think tank, exert influence on the making of U.S. policy on a variety of issues, including the disputes in the Spratlys/South China Sea issues. The following is a summary of unsolicited policy recommendations offered by American scholars interested in studying U.S. Asian security policy or the South China Sea issues.

The scholars who participated in the workshops on "Security Implications of Conflict in the South China Sea," held in November 1995 and on "Promoting Trust and Confidence in Southeast Asia: Cooperation and Conflict Avoidance," held in October 1997, suggested the United States must unambiguously declare and demonstrate its commitment to a peaceful settlement of the territorial disputes in the Spratlys/South China Sea area. It is necessary for the United States to adopt a more "active neutrality" position on the South China Sea issues. The United States should also be more proactive in promoting direct dialogue among the claimant countries. While the participating scholars welcomed the issue of the May 10, 1995 policy statement on the Spratlys/South China Sea by the U.S. Department of State, they argued that the timing for issuing the statement was too late and the manner was too soft. Accordingly, they suggested that in the future, "at the first sign of tension or instability the U.S. should issue a strong well-publicized, renewed endorsement of the 1992 Manila Declaration calling for the peaceful settlement of disputes over the Spratly Islands, the exercise of restraint in the area, and cooperation among claimants in the South China Sea."¹¹⁷ They also considered a continued U.S. military presence in Asia important, since it would put the "active"

117. *Ibid.*, p. 16.

in any policy of active neutrality in the South China Sea. Some of the workshop participants considered it not appropriate for Washington to play the role as an "honest broker" or mediator in the process of managing or resolving the disputes, since it would receive no support from China and the ASEAN claimants and would likely be viewed as an American attempt to preempt the Indonesian-sponsored Workshop on Managing Potential Conflicts in the South China Sea, which has continuously been held in different cities of Indonesia under the Canadian financial support since 1990. Instead, they suggested that the United States should continue to express its support for the Indonesian workshop efforts. At the same time, the United States should support and encourage ASEAN's efforts to include the South China Sea issues more squarely in ARF's and CSCAP's agenda, so that the participants in that two regional multilateral security mechanisms are able to discuss or exchange views on the issues.¹¹⁸

The participants in a roundtable discussion on China and the South China Sea issues, held at the Center for Naval Analysis in Washington D.C. on March 11, 1999 also proposed a number of policy recommendations to be considered by the U.S. government.¹¹⁹ In recognition of the economic hardship and domestic political problems experienced by Indonesia, during and after the 1997-98 Asian financial crisis, they suggested that the United States should give support to the assumption of a greater leadership role in ASEAN by Singapore and Thailand. In addition, the U.S. government should send stronger messages to China with respect to Beijing's behavior in the Spratlys/South China Sea area. In that regard, they suggested Washington reject the perception that creeping land-grabs under the guise of asserting sovereignty are acceptable behavior and remind Beijing that the Chinese actions on Mischief Reef "directly contradict the soothing nostrums of cooperation and consultation in their 'New Concept of Security'."¹²⁰ As far as de-

118. *Ibid.*, pp. 16-17.

119. Michael McDevitt, "China and the South China Sea — A Conference Summary Report," Pacific Forum CSIS, *PacNet Newsletter* #15, April 16, 1999.

120. *Ibid.* The Chinese "New Concept of Security" includes the following four elements: (1) the Five Principles of Peaceful Coexistence; (2) all countries should open their markets to one another, eliminate the inequalities and discriminatory policies in trade and strengthen mutually beneficial cooperation; (3) China espouses the promotion of mutual trust and understanding through dialogue and cooperation. Settle disputes peacefully, and engage in security dialogues and cooperation that is aimed at promoting trust; and (4) the development of "strategic partnerships" with key nations such as the United States and Russian Federation and political-economic organizations

fending the U.S. national interests, the participants suggested that the U.S. government should define its interests more broadly by asserting that the disputes in the Spratlys/South China Sea area have the potential to trigger conflict, and that the best approach to prevent disputes from escalating into serious conflict is to internationalize resolution of the dispute before resources become an issue. The participants also suggested that the U.S. government should increase the full range of bilateral activities with Vietnam and the Philippines, since these are the two ASEAN states involved directly in the territorial disputes in the Spratlys/South China Sea area. Finally, the U.S. military presence in the South China Sea should be more visible and openly.¹²¹

Policy recommendations had also been suggested by those scholars who were invited to give a talk in a series of study group meetings held at United States Institute of Peace (USIP)¹²² since March 1995 on managing potential territorial conflicts in the South China Sea.¹²³ Gregory Austin suggested three policy recommendations for consideration by the U.S. government. First, policy measures should be undertaken by the United States to create transparency over diplomatic or military moves by the claimant countries, through the use of active monitoring and public reporting on activities in the Spratlys/South China Sea area. Second, in contrast with the official U.S. position, Austin suggested that the U.S. government should take a position on the legal merits of the territorial claims, particularly China's claim. Interestingly enough, Austin suggested that the U.S. should support China's claims to the Spratly and Paracel Islands in the South China Sea, mainly because Beijing's claims are the strongest among all of the claimants under international law. Finally, the U.S. and Australian governments should hold joint freedom of navigation exercises in the disputed Spratly area — sailing up to 12 nautical miles of the islands — to

such as the European Union and ASEAN. For more discussion, see David Finkelstein and Michael McDevitt, "Competition and Consensus: China's 'New Concept of Security' and the United States Security Strategy for the East Asia-Pacific Region," Pacific Forum CSIS, *PacNet Newsletter*, No. 1, January 8, 1999.

121. Michael McDevitt, *op. cit.*

122. The United States Institute of Peace is an independent, nonpartisan federal institution created and funded by Congress to strengthen the U.S. capacity to promote the peaceful resolution of international conflict. For more information, visit the institute's home page at <<http://www.usia.org/aboutusip.html>>.

123. Between March 1995 and March 1996, Hasjim Djalal, Jon M. Von Dyke, Ji Guoxing, Gregory Austin, Stapleton Roy, David Denoon, and Ian Townsend-Gault were invited to give a talk on the South China Sea issues.

reinforce mutual interest in freedom of navigation.¹²⁴ Jon M. Van Dyke, another presenter in the USIP's South China Sea workshop meeting, suggested that new momentum should be added to the Indonesian-sponsored informal workshop dialogue process by setting up an Eminent Persons Group or a "Committee of Eminent Persons" if the workshop wanted to avoid being criticized as having reached a plateau or become a "talking club".¹²⁵ The proposed Committee of Eminent Persons consists of prominent individuals from inside and outside the Spratlys/South China Sea area and might hold a series of meetings to discuss and recommend solutions to the South China Sea disputes.¹²⁶

Other American scholars, such as Henry J. Kenny, Mark J. Valencia, Richard E. Hull, Scott Snyder, Phillip C. Saunders, and Richard D. Fisher, also proposed a number of policy recommendations for consideration by the U.S. government. Henry J. Kenny suggested six measures that should be considered by the U.S. government in the process of making its policy on the Spratlys/South China Sea.¹²⁷ First, the United States should play a more active diplomatic role in the process of helping manage or resolve disputes in the Spratlys/South China Sea area. In this regard, the United States could make available good offices to arbitrate disputes, while supporting efforts made by Asian countries in seeking the same goals. The United States should encourage the claimant countries to negotiate resolving disputes between or among themselves and support Track II institutions such as CSCAP to discuss the issues. In line with this diplomatic approach, the United States should promote a legal solution for the disputes. This makes it necessary for the United States to accede to the 1982 LOSC. Second, the United States should help advance a study to clarify economic value of the islands in the South China Sea and, if necessary, support an independent geological survey in the area. Third, the United States should express its strong support to the CBMs adopted for the purpose of defusing tensions in the Spratlys/South China Sea area. These measures could include arms control measures such as transparency of military activities, notification of military maneuvers,

124. See the summary of USIP's South China Sea Working Group #4, September 11, 1995, prepared by Scott Snyder, Program Officer, U.S. Institute of Peace.

125. See Mark J. Valencia, Jon M. Van Dyke, and Noel A. Ludwig, *Sharing the Resources of the South China Sea* (The Hague: Kluwer Law International, 1997), p. 115.

126. *Ibid.*, p. 116.

127. Henry J. Kenny, "The South China Sea: A Dangerous Ground," *Naval War College Review*, Vol. 49, No. 3, Summer 1996, p. 107.

and limits on military presence, and CBMs in areas of common interest like freedom of navigation and environmental and anti-piracy coordination. Fourth, the United States should define its interests involved in the area more precisely and clarify the application of the 1951 U.S.-Philippine MDT. Under the MDT the United States has treaty obligations to assist the Philippines in the event of an attack on armed forces of that country. Fifth, the United States should consider improving military relations with China, particularly expanding the U.S. cooperative engagement strategy. Finally, the United States should avoid entrapment or entanglement in local disputes over which Washington has no control.¹²⁸

Phillip C. Saunders, in his study of U.S. Asian security strategy, argued that

[a] sustainable U.S. strategy must address both [the] “free-rider” problem and the decision-making calculus of potential allies in the region. The United States needs to make Asian countries take more responsibility for their own security, but also to reassure them that the United States would support them if China used military intimidation to undermine their sovereignty. The strategy should seek to channel future Chinese military developments in directions that enhance regional stability, rather than rely solely on economic interdependence to stay China’s hand. This requires a military strategy that moves beyond “presence” and towards a framework for military cooperation that reinforces U.S. credibility and encourages Asian countries to resist any Chinese aggressive actions.¹²⁹

In order to encourage Asian states to take more responsibility for their own security, Saunders suggested that the United States should refrain from committing itself to support Philippine claims to the Spratly Islands in the South China Sea.¹³⁰ In addition, he suggested that the U.S. should adopt a strategy of conditional engagement, instead of comprehensive engagement, with China. Moreover, the “virtual alliance” approach for Asian security should be adopted by the U.S. government to implement the strategy of conditional engagement with China. Saunders argued that the “virtual alliance” approach has several benefits. First, it can provide the

128. *Ibid.*

129. Phillip C. Saunders, “Avirtual Alliance for Asian Security,” *Orbis*, Spring 1999, p. 243.

130. *Ibid.*, p. 249.

United States with a more equitable means of sharing Asian defense burdens and a flexible structure for coordinating defense policy. Second, it provides the United States with a framework for military cooperation and a solid foundation to support U.S. influence in Asia. Finally, if military actions were taken by China to undermine the sovereignty of its neighbors, the "virtual alliance" approach would help develop Asian military forces and infrastructure that vastly expand the U.S. repertoire of responses and reinforce the willingness of Asian states to stand up to Chinese intimidation.¹³¹

Mark J. Valencia, in his study of the relationship between China and the South China Sea disputes,¹³² suggested that the U.S. government should reiterate and expand those principles outlined in the May 1995 statement issued by the State Department on the Spratly Islands and the South China Sea. In addition, the United States should pursue a policy of active neutrality by asking Taiwan and China to clarify their specific claims and the bases for them. This might then help clarify China's intentions in the Spratlys/South China Sea area.¹³³ Richard E. Hull of the Institute for National Strategic Studies at National Defense University also expressed his support for the U.S. position outlined in the May 1995 statement. In addition, he suggested the United States continue to discourage any use of force while encouraging all the claimants to agree to a peaceful settlement as soon as possible. Moreover, the U.S. government should be more explicit in its public statements regarding America's concerns over the freedom of navigation in the Spratlys/South China Sea area.¹³⁴

Scott Snyder of the United States Institute of Peace suggested that a coherent and effective U.S. policy on the Spratly Islands and the South China Sea should consist of two components: first, to help the claimant countries to generate the political will to engage in a negotiating process; and second, to maintain the credibility of

131. *Ibid.*, p. 255.

132. Mark J. Valencia, *China and the South China Sea Disputes*, Adelphia Paper 298, the Institutional Institute for Strategic Studies, Oxford University, 1995.

133. *Ibid.*, p. 30.

134. Richard E. Hull, "The South China Sea: Future Source of Prosperity or Conflict in South East Asia?" Institute for National Strategic Studies, National Defense University, *Strategic Forum*, No. 60, February 1996. Available at National Defense University's home page <<http://www.ndu.edu/inss/strforum/forum60.html>>.

the U.S. intent to deter any one (or group of) claimants from unilaterally asserting a solution by using military means.¹³⁵

Finally, Richard D. Fisher, Jr., Director of the Asian Studies Center at the Heritage Foundation, argued that "China's aggressiveness has been encouraged in part by a long-standing U.S. policy of neutrality toward competing claims in the Spratly group."¹³⁶ Accordingly, the United States should modify its neutral stand toward the sovereignty and maritime jurisdictional disputes in the Spratlys/South China Sea area by identifying China's actions as a threat to regional peace and stability and encourage all claimant countries to pursue a multilateral settlement. In addition, he suggested that the U.S. government should offer a range of excess U.S. aircraft and naval vessels to help rebuild the Philippine air force and navy for the purpose of countering China's act in the disputed area.¹³⁷

135. Scott Snyder, "The South China Sea Disputes: Prospects for Preventive Diplomacy," USPI, Special Report, October 1996. Available at USIP's home page <http://www.usip.org/oc/sr/snyder/South_China_Sea2.html>.

136. Richard D. Fisher, Jr., "Rebuilding the U.S.-Philippine Alliance," *The Heritage Foundation Backgrounder*, No. 1255, February 22, 1999.

137. *Ibid.*

CHAPTER VII

THE SOUTH CHINA SEA IN THE YEARS 2000/2001 AND U.S. POLICY UNDER THE NEW BUSH ADMINISTRATION

INTRODUCTION

The overall situation of the SCS in the years 2000/2001 was influenced by a number of new developments, including: (1) the expansion of India's military presence from the Indian Ocean to the SCS; (2) efforts taken by Japan to promote cooperation in the SCS to deal with maritime security issues, piracy in particular that are believed to threaten shipping safety and freedom of navigation in the area; (3) the increase of military exercises conducted by both the claimants and non-claimants, unilaterally, bilaterally, or multilaterally in the SCS; (4) the improvement of diplomatic relationships among the claimants, in particular, between China and the member states of ASEAN; and (5) the election of George W. Bush as U.S. president, who is believed to have adopted a different policy toward China than that of predecessor Bill Clinton. In addition to the new developments listed above, there were also numerous and continuous actions and/or counteractions taken by the claimants to bolster their respective territorial and jurisdictional claims over the islands in the SCS. These actions include, but are not limited to the arrest of foreign fishing vessels that are detected in the disputed waters, the sending of warships to the disputed waters as a way of displaying military might or representing military presence, the establishment of administrative bodies on the disputed islands, and so on. Moreover, efforts had been made by a number of regional security mechanisms, in particular the AMM and ARF and Track II dialogue processes such as the CSCAP and the SCS Workshop, to deal with the territorial and maritime jurisdictional disputes in the SCS. One of the major developments of this sort has been the effort taken by China and the ASEAN to adopt a regional code of conduct in the SCS. On the other hand, there was also a decline in the importance of the SCS Workshop in helping manage potential conflicts in the SCS, mainly because of the decision by the CIDA to terminate funding for participants to attend the workshop and the relevant meetings.

The purpose of this chapter is to discuss these new policy events that are believed to have the potential to affect peace and stability in the SCS. The U.S. policy on the territorial and maritime jurisdictional disputes in the SCS under the new Bush administration will also be examined by focusing on the potential tension between the U.S. and China in the SCS, as demonstrated by the EP-3 incident. Finally, efforts taken by China and the ASEAN to formulate a regional code of conduct in the SCS in the years 2000 and 2001 will be updated in this chapter.

I. INDIA MOVES INTO THE SOUTH CHINA SEA

The event that had the most important impact on the development of the situation in the SCS would have to be the expansion of the Indian navy's area of operations into the region in the year 2000.¹ This move will have a major impact on the naval balance of power in the SCS, on naval strategic deployment both within and outside the region, and on the development of both bilateral and multilateral military relationships in the region. It also makes the SCS an area where many different players are now competing for control. These countries and organizations include China, the U.S., the Russian Federation, India, Japan and ASEAN.

India is the dominant power in South Asia and has always viewed the Indian Ocean as being within its sphere of influence. Securing control over the Indian Ocean has long been one of India's main strategic objectives. In the last few years, India has developed a strategic thinking based on long-range naval operations. Indian has planned to exert control over five strategic channels – the Suez Canal, the Bab el Mandeb, the Strait of Hormuz, the Strait of Malacca and the Sunda Strait – and step up implementation of their “southern forwarding strategy.”² As part of this strategy, the Indian navy has been expanding its area of operations east into the South China Sea and the Pacific Rim, west towards the Red Sea and the Suez Canal bordering the Mediterranean, and south to the southern edge of the Indian Ocean and possibly even around the Cape of Good Hope into the Atlantic. India's Minister of Defense, George Fernandes, confirmed the existence of this plan in September 2000.³ India is also planning to attach a carrier group to its East-

1. “India Challenges China in South China Sea,” *Asia Times* (Online), April 27, 2000, available at <<http://www.atimes.com/ind-pak/BD27Df01.html>>.

2. “India's Navy Moves into the South China Sea,” *Financial News* (China) (in Chinese), October 2, 2000, available at <<http://www.homeway.com.cn/>>.

3. *China Times* (Taipei), September 20, 2000.

ern Region and Western Region fleets, and another to the Far East Naval Command located in the Andaman Islands. This would give India one of the largest carrier fleets in the world, and would significantly improve its ability to project naval power over long distances. In mid-July 2000, the Chief of the Naval General Staff, Admiral Sushil Kumar, visited Russia, and formally accepted ten submarines built for India by the St. Petersburg shipbuilding yards. For some time India has been planning to build a ballistic missile submarine. In September 2000, India successfully tested the Akash ground-to-air missile in the Andaman Islands.⁴

In addition, India has also made use of visits by heads of state and senior officers in the armed forces, the signing of agreements for military collaboration, and the implementation of joint naval exercises to further its strategic expansion plan. In February 2000, India held joint exercises with Singapore. In October and November of the same year, India held joint military and anti-piracy exercises with several other countries, including Vietnam, South Korea and Japan, in the SCS and in the southern part of the Indian Ocean. In February 2001, a five-day International Fleet Review, including 73 ships from the Indian navy and 24 ships from France, United Kingdom, Australia, Thailand, South Africa, Kenya, Singapore, Japan, Russia, and the United States, was held in Mumbai, India.⁵

As far as diplomatic activity is concerned, President Clinton visited India in March 2000. In September 2000, Indian Prime Minister Atal Behari Vajpayee paid a return visit to the U.S. During the visit, India and the U.S. agreed that in the future they would maintain closer relations. In November 2000, the U.S. and India began planning collaboration on peacekeeping operations and multi-lateral exercises.⁶ In April 2000, India signed a 14-article agreement for collaboration with Vietnam; most of these articles were concerned with collaboration on security. In August 2000, Japanese Prime Minister Yoshiro Mori visited India. During the visit, he announced that one could see the need for collaboration between Japan and India just by looking at a map, that such collaboration was of great strategic importance, and that he hoped for closer collaboration between the two nations with respect to international affairs

4. *Associated Press Online* (USA), September 20, 2000.

5. "Cowpens Sailors Share Good Will during Fleet Review," February 27, 2001, available at <<http://www.c7f.navy.mil/news/2001/02/36.htm>>.

6. *Times of India*, November 21, 2000.

and security.⁷ In November 2000, Russian President Putin visited India, and in the same month India's minister for external affairs, Jaswant Singh, visited Vietnam. During this visit, Vietnam announced that it was in favor of APEC membership for India, and that it believed India should become a member of the expanded United Nations Security Council.⁸ In October 2000, India and Malaysia discussed military and economic collaboration. India's minister of defense, George Fernandes, and Malaysia's foreign minister, Syed Hamid Albar, agreed to hold a meeting of the Malaysia-India Defense Committee.⁹ In January 2001, India and Indonesia signed five bilateral agreements, including one for military collaboration; they plan to establish an India-Indonesia Joint Commission.¹⁰ Also in January 2001, Indian Prime Minister Atal Behari Vajpayee visited Vietnam, and signed agreements for collaboration on nuclear power, tourism and culture. The two countries will also be discussing collaboration on security matters. As Vietnam is currently the rotating chair nation of ASEAN, India hopes that by strengthening bilateral ties with Vietnam it will also be able to improve its relationship with ASEAN.¹¹

China and the U.S. are concerned about India's naval expansion, the extension of its strategic reach into the SCS, and the strengthening of bilateral military and diplomatic ties with Japan and the nations of Southeast Asia. The U.S. was worried that naval confrontation or conflict between China and India in the SCS could affect its national interests with respect to the maintenance of peace and stability in the region, and would also affect the free passage of American ships through the SCS.¹² At the same time, however, in some ways the U.S. is glad to see the expansion of Indian power into the SCS, as it will help contain China's steadily-increasing naval might in the region.¹³

7. "Japan-India Summit Meeting" (Summary), August 23, 2000, the Ministry of Foreign Affairs of Japan, available at <http://www.mofa.go.jp/region/asia-paci/pmv0008/india_s.html>.

8. *Hindustan Times* (India), November 7, 2000.

9. *Asia-Pacific Infonet* (US), October 11, 2000; and *Asia-Pacific Defence Reporter* (Australia), October 18, 2000.

10. *Jakarta Post* (Indonesia), January 10, 2001.

11. *South Morning Post* (China), January 8, 2001.

12. "India's South China Sea Foray Raises Eyebrows," *Rediff On the Net*, May 9, 2000, available at <<http://www.rediff.com/news/2000/may/09us.htm>>.

13. For instance, see Aziz Haniffa, "Think Tank Urges Bush to be Strict with Beijing," *India Abroad Online Edition*, May 4, 2001, available at <<http://www.indiaabroadonline.com/nuclearissue/may2001/think.shtml>>. See also Larry M.

The visits to India by Clinton and to the U.S. by Vajpayee in 2000 were an expression of these complex relationships and policy considerations. In April 2001, several days after the EP-3 incident, Jaswant Singh, foreign and defense minister of India, visited Washington to talk about how to strengthen military ties between the two countries. In July 2001, Admiral Dennis C. Blair, commander-in-chief of the U.S. Pacific Command, stated during his visit to India that military cooperation between the U.S. and India was "on an upward trend."¹⁴ The two countries also agreed to revive an inter-governmental defence planning group, giving a "substantive leap" to military-to-military cooperation.¹⁵ It is clear that the U.S. has been pursuing greater military ties with India over the past two years.

China was of the opinion that the projection of Indian power into the SCS constitutes a threat to its national security and strategic deployment. The strengthening of diplomatic relations and signing of agreements for military collaboration between India and the countries that lay claim to the islands of the SCS (particularly Vietnam and Malaysia) will have a negative impact on China's attempts to maintain control over the islands. At the same time, India's intervention will upset the balance of naval power in the region in a way that is unfavorable to China. Commentators feel that the main reason why India is moving into the SCS is in response to China's activities in Bangladesh, Myanmar and Pakistan.¹⁶ Since both India and China are seeking to establish themselves as world powers, they are eager to expand their spheres of influence. Given the long-standing enmity between India and China and the border disputes that have occurred between them, in the future friction can be anticipated with regard to geographical relationships and regional security.

In order to strengthen its relations with India, efforts were also undertaken by China during 2000 and 2001. In July 2000, for instance, China's minister for foreign affairs, Tang Jiaxuan, visited India. During the visit, he put forward five proposals for strengthening bilateral relations between the two countries.¹⁷ In

Wortzel and Dana R. Dillon, "Improving Relations with India without Compromising U.S. Security," The Heritage Foundation *Backgrounders*, No. 1402, December 11, 2000.

14. *The Dawn* (Pakistan), July 11, 2001.

15. *Times of India* (India), July 19, 2001.

16. "India's South China Sea Foray Raises Eyebrows," *supra* note 12.

17. "China Raises Five-Point Proposal for Relations with India," *People's Daily*, July 22, 2000.

August 2000, a Chinese military delegation visited India for exchange activities, and, in September of the same year, two Indian warships paid a goodwill visit to Shanghai.¹⁸ In January 2001, Politburo Chairman Li Peng visited India and Bangladesh; the main purpose of his visit was to improve bilateral ties between China and these two countries. During his visit, Li Peng stated that China had never viewed India as a threat, and said that China did not constitute a threat to any other nation, and did not seek to establish a sphere of influence. He said that China wished to strengthen collaboration with India in terms of trade and economic and international affairs, so as to increase the understanding and mutual trust between them. China also stated that it is willing to maintain good relations with all the nations surrounding the SCS, and that it sought permanent peace, stability and development in the region, with every nation treating the others as equals, and settling disputes peacefully through consultations.¹⁹ In May 2001, China's warships visited Mumbai, India. The two countries also planned to hold joint naval exercises in the western part of the Indian Ocean.²⁰

II. THE EXPANSION OF THE JAPANESE STRATEGIC DEPLOYMENT IN THE SOUTH CHINA SEA

It became apparent in 2000 that Japan was strengthening the ability of its Self-Defense Forces (SDF) to operate at long range, and was seeking to play an active role in collaboration on maritime security in the SCS. With the passage of the Peripheral Operations Act, the permitted area of activity of the SDF has been expanded from Japan's main islands to encompass "peripheral zones," including the SCS. The Japanese government has declared that in emergencies Japanese forces would be permitted to conduct missions in areas outside Japan. A series of military and diplomatic measures have also been taken to back up the policy design. On the one hand, Japan has strengthened the ability of its SDFs to operate at long range; at the same time, it has become more actively involved in and sought to exercise control over regional collaboration to combat piracy in the SCS. In addition to purchasing long-range re-

18. *China Times* (Taipei), August 19, 2000 and "Consolidated Sino-Indian Ties Important to Regional Stability: Li Peng," *People's Daily*, September 1, 2000.

19. "China's Top Legislator Arrives in India for Goodwill Visit," *People's Daily*, January 9, 2001; "Chinese Top Legislator Explains India Policy," *People's Daily*, January 13, 2001; and "India, China Have More Similarities Than Differences: Li Peng," *People's Daily*, January 14, 2001.

20. *China Times*, May 28, 2001, p. 11.

connaissance aircraft and frigates with a displacement of 10,000 tons, Japan has been making a serious effort to upgrade its aerial reconnaissance and information-gathering abilities. Its Air SDF had already acquired four E-767 AWACS aircraft, but Japan has now decided to purchase two more advanced long-range reconnaissance aircraft. These aircraft have a range of 7,500 miles, and would be capable of flying from Japan to the Strait of Malacca and back to Japan. Not only would they be able to observe military activity on the part of China, but also to fly over the Spratly Islands and observe Cam Ranh Bay in Vietnam and other areas in the region. Japan is also developing its satellite reconnaissance system. It plans to launch four reconnaissance satellites in 2002, of which two will carry optical sensors used for photo-reconnaissance, which have a resolution radius of one meter. The other two will be laser reconnaissance satellites capable of penetrating clouds, with a resolution radius of three meters. These satellites will provide Japan with timely, accurate information for long-distance military operations, improving their ability to conduct airstrikes and implement strategic deployment. The Maritime Self-Defense Force (MSDF) has also been strengthening its capabilities at an extremely fast rate. It now possesses over 150 warships and over 200 aircraft. These include the *Disden*-class frigate, the most advanced in the world, which has a standard displacement of 7,250 tons, a maximum speed of 30 knots, and can carry 72 vertically-launched Standard ground-to-air missiles. These frigates also carry an anti-submarine helicopter, and the ship's radar can simultaneously direct 20 missiles onto aerial targets. Japan is also improving its amphibious landing capability and long-distance sea transport capability. Their *Osumi*-class transport ship has a flat deck on which aircraft can take off and land, allowing it to serve as a small-scale aircraft carrier. By the year 2015, Japan plans to have built either two medium-sized aircraft carriers or a large transport vessel with displacement in excess of 15,000 tons.²¹

Japan has also been conducting military exchange visits and joint exercises with countries in Southeast Asia and South Asia. In May 2000, the Director-General of the Defense Agency, Tsutomu Kawara, visited Vietnam and Singapore for discussions regarding search and rescue operations in the SCS and regular military con-

21. "Japan's SDF Quietly Expanding Its Long-range Capability" (in Chinese), *People's Daily Online*, December 13, 2000.

sultations between defence officials.²² Japan signed an agreement with Singapore whereby if Japan needed to evacuate its nationals or help in the execution of peace-keeping operations, Singapore would allow its SDF to use bases in Singapore. In October 2000, Japan's navy took part in *Pacific Reach 2000*, a submarine-rescue exercise in the SCS involving Singapore, South Korea and the United States.²³ Japan has also been holding talks on military collaboration with India. In early November 2000 Japan held joint anti-piracy exercises with the Indian air force off the coast of Southern India. Commentators believe that an informal alliance is being formed among Japan, Vietnam, India and Singapore.²⁴ In 2001, Japan will be participating as an observer in the "Cobra Gold" joint exercises to be held by the U.S. and Thailand. At the end of March 2000, an International Conference of All Maritime Related Concerns, both Governmental and Private, on Combating Piracy and Armed Robbery against Ships was held in Japan. This was followed in April by a Regional Conference on Combating Piracy and Armed Robbery against Ships, held in Tokyo, at which a draft action plan for combating piracy was drawn up.²⁵ Japan has also suggested to ASEAN that it establish an anti-piracy pact, which would allow Japan to send units of its MSDFs into the Strait of Malacca to collaborate with ASEAN on anti-piracy operations.²⁶ This suggestion was rejected by Malaysia, despite the fact that Malaysia has in the past held anti-piracy exercises with Japan.²⁷

In October 2001, Japan's Diet passed legislation authorizing Japan's SDF to provide rear-area logistical support for coalition members, in particular, the United States, in its fight against terrorism.²⁸ In November 2001, Japan formally decided to dispatch three MSDF ships to the Indian Ocean to collect intelligence and conduct

22. "Japan – Vietnam: India Ties," *Jane's Online*, June 2, 2000, available at <http://www.janes.com/regional_news/asia_pacific/news/fr/fr000602_1_n.shtml>.

23. "Japan's Widening Naval Operations," the International Institute for Strategic Studies (U.K.), May 4, 2001, available at <<http://www.iiss.org.uk/pub/sp/sp01012.asp>>.

24. "Japan – Vietnam: India Ties," *supra* note 22.

25. See "Opening Speech by Mr. Tetsuma Esaki, Senior State Secretary for Foreign Affairs, Regional Conference on Combating Piracy and Armed Robbery against Ships," the Ministry of Foreign Affairs of Japan, April 27, 2000, available at <<http://www.infojapan.org/policy/global/piracy/speech0004.html>>.

26. "Japan Mulls Anti-Piracy Pact with ASEAN," *The Straits Times*, January 3, 2001.

27. "Malaysia Rejects Japan's Offer for anti-Piracy Patrols," *The Times of India* (Online), November 15, 2000.

28. "Japan's New Counterterrorism Legislation," Press Statement by Richard Boucher, Spokesman, U.S. Department of State, October 29, 2001.

surveillance in the area.²⁹ But it was reported that China argued against the deployment, pointing out that it would violate Japan's constitution.³⁰

It remains to be seen whether the expansion of the area of activity of Japan's MSDF into the SCS and the Indian Ocean will have a positive or negative impact on crisis management and the maintenance of peace in the region. But it is worthwhile to note that while "new comers" have begun to move in the SCS area, another important player is gradually moving out of the area, namely, the Russian naval force.

III. THE DECREASE OF RUSSIAN INFLUENCE IN THE SOUTH CHINA SEA AREA

There was a further shrinkage of the Russian naval sphere of influence in the SCS area in the years 2000 and 2001. In the past, China was concerned very much about the potential security threat imposed by the former Soviet navy from the sea, which had been using Vietnam's Cam Ranh Bay naval base rent free since 1979. But now, the threat was believed to be non-existent, mainly because of the rapid growth of friendly relations between China and Russia over the past few years and the decision of Vietnam not to extend Russia's lease on the base when it expires in 2004.

On December 10, 1999, Chinese President Jiang Zemin met with former Russian President Yeltsin in Beijing. A joint press communique was issued after the meeting, in which the two countries stressed the importance of a strategic partnership of cooperation oriented toward the 21st century between China and the Russian Federation. They also pledged to take coordinated actions and oppose any threat to global stability.³¹ From February 28 to March 1, 2000, Chinese Foreign Minister Tang Jaixuan paid a formal visit to Russia. A press communique was issued at the end of the visit, by the Chinese Foreign Minister and the Russian Foreign Minister Igor Ivanov. The two agreed to continue to strengthen and deepen their cooperation in maintaining global strategic stability, and to under-

29. "3 MSDF Ships to be Dispatched to Indian Ocean Fri.," *Kyoto News* On the Web, November 7, 2001.

30. "Chinese Advice Has Japan Up in Arms," *Stratfor*, December 19, 2001, available at <<http://www.stratfor.com/home/giu/archive/121901.htm>>.

31. President Jiang Zemin and President Yeltsin Issue Joint Press Communique at the Conclusion of Their Second Informal Summit, December 10, 1999. For the content of the communique, visit the web site of the Ministry of Foreign Affairs of the People's Republic of China at <<http://us-mirror.fmprc.gov.cn/eng/3803.html>>.

take efforts to ensure an all-round and strict compliance with the 1972 Anti-Ballistic Missile (ABM) Treaty. The two foreign ministers also reaffirmed that China and Russia shared a common understanding on security and stability in their neighboring areas, including the Asia-Pacific, Central Asia and South Asia. The two countries were ready to promote all-around cooperation within the framework of the Shanghai Five.³² On April 4, 2001, three days after the EP-3 incident in the SCS area, China's Vice Foreign Minister Zhang Deguang and Russia's Vice Foreign Minister G. Mamedov held consultations on strategic stability in Beijing. The two vice foreign ministers had an in-depth exchange of views and reached a broad consensus on missile defense, disarmament and arms control issues. They pointed out that both China and Russia opposed the deployment of the National Missile Defense (NMD) system, which is prohibited by the 1972 ABM Treaty, and the development of the TMD system of a military bloc nature for the Asia-Pacific region. They also stressed that there is a need for the two countries to do everything possible to maintain regional and global strategic balance and stability.³³ On June 14, 2001, the presidents of the "Shanghai Five" (China, Russia, Kazakhstan, Kyrgyzstan, and Tajikistan) and Uzbekistan met in Shanghai and decided to upgrade the "Shanghai Five" cooperation mechanism to the Shanghai Cooperation Organization (SCO). The establishment of the SCO was considered by the participating countries as a major step to consolidate the security and stability of the central Asian region as well as the whole Asian-Pacific region and develop relations of good neighborliness, trust and cooperation in the region.³⁴ On July 16, 2001,

32. The "Shanghai Five" is a new cooperation mechanism among China, Russia, Kazakhstan, Kyrgyzstan, and Tajikistan. The leaders of the five countries began to meet annually in 1996. This mechanism promotes good-neighborliness and mutual trust, equality and mutual benefit, solidarity and coordination, and common development among the five countries. For more information, see "Spokesperson on the 'Shanghai Five' Mechanism," available at <<http://usmirror.fmprc.gov.cn/eng/11861.html>>. Also see "Background Information on the Shanghai Five," (in Chinese), available at <http://usmirror.fmprc.gov.cn/chn/11822.html>. For the text of Joint Press Communique on the Visit by Foreign Minister Tang Jiaxuan of the People's Republic of China to Russia Federation, visit the web site of the Ministry of Foreign Affairs of the People's Republic of China at <<http://us-mirror.fmprc.gov.cn/eng/4025.html>>.

33. For more information on the consultations, visit the web site of the Ministry of Foreign Affairs of the People's Republic of China at <<http://us-mirror.fmprc.gov.cn/eng/9580.html>>.

34. For the Declaration for Establishing the Shanghai Cooperation Organization (in Chinese), visit the web site of the Ministry of Foreign Affairs of the People's Republic of China at <<http://us-mirror.fmprc.gov.cn/chn/13552.html>>.

China and Russia signed the "Treaty of Good-Neighborliness and Friendly Cooperation between the People's Republic of China and the Russian Federation" in Moscow.³⁵ The treaty was proclaimed to be "an important milestone in the history of state-to-state relations between the two countries and marks a new stage in bilateral ties."³⁶ In addition, the treaty "affirms that the two countries' friendly ties are a new type of state-to-state relations that is non-alliance, non-confrontation and not targeted at third countries."³⁷ Apparently, the Russian threat to China's security and interests in the SCS had disappeared.

We are likely to see the complete withdrawal of the Russian sphere of influence in the SCS area in the years to come. In June 2001, spokesman Le Sy Vuong Ha of the foreign ministry of Vietnam announced that "Vietnam has no plans to lease the Cam Ranh Bay base to any country for military purposes after 2004," meaning that Russia will lose its sole military base in Southeast Asia when the lease on the base runs out in 2004.³⁸ In October 2001, Russian President Vladimir Putin met Vietnamese Prime Minister Phan Van Khai in Shanghai while attending the APEC meeting. The naval base was one of the issues that came up during the talks. As a result, it was confirmed that Russia would give up the Cam Ranh Bay naval base, for which rent-free lease is due to expire in 2004.³⁹ While Russia decided to hand the base back to Vietnam, the Viet-sovpetro venture, a Vietnamese-Russian venture which has operated the *Dai Hung* (Big Bear) oilfield since 1999, will be continued. The oilfield, located in an area which overlaps with the Chinese claimed waters in the SCS, is estimated by traders to pump around 2,000 and 4,000 barrels of crude oil a day.⁴⁰ Before proceeding to the examination of U.S. SCS policy, it is worthwhile to note that the U.S. is interested in acquiring access to the strategic facility in the

35. For the text of the Treaty (in Chinese), visit the web site of the Ministry of Foreign Affairs of the People's Republic of China at <<http://us-mirror.fmprc.gov.cn/eng/15722.html>>.

36. See Joint Statement Signed by the Chinese and Russian Heads of States, July 16, 2001. For the text of the Statement, visit the web site of the Ministry of Foreign Affairs of the People's Republic of China at <<http://us-mirror.fmprc.gov.cn/eng/15723.html>>.

37. *Ibid.*

38. Steve Kirby, "Vietnam Brings Curtain Down on Russia's Sole Southeast Asian Base," *Agence France Presse*, June 8, 2001.

39. "Russia, Vietnam Pleased with Navy Base Progress," *Reuters*, October 19, 2001.

40. *Ibid.*

Cam Ranh Bay once Russia withdraws, as reported in *Japan Policy & Politics* in June 2001.⁴¹

IV. DEVELOPMENT OF U.S. SOUTH CHINA SEA POLICY: FROM ACTIVE NEUTRALITY TO ACTIVE CONCERN

U.S. Asia-Pacific security strategy includes the handling of sovereignty and territorial disputes over the islands located in the SCS. In the past, the U.S. adopted a policy position of neutrality on the SCS issue, but as tension in the area increased, its SCS policy changed to one of "active neutrality." By 2000, commentators were taking the view that the U.S. had switched from a policy of "active neutrality" to one of "active concern," and was moving in the direction of becoming willing to intervene in sovereignty questions.⁴²

During the fifteenth ASEAN-U.S. dialogue, which was held on May 24-25, 2000 in Kuala Lumpur, Malaysia, the U.S. pointed out that the SCS remained an area of potential conflict in the region. While welcoming efforts to resolve differences peacefully taken by the parties concerned, the U.S. also urged that other steps should be considered to bring stability to the SCS area.⁴³ In July 2000, the U.S. officials attending the seventh ARF suggested that the Forum should include the SCS question among the issues under discussion. The U.S. also said that in settling the SCS issue, in addition to the dialogue between China and the ASEAN, consideration should also be given to making use of other useful multilateral channels or CBMs. The U.S. also asked ASEAN to consider giving up its monopoly on the chairmanship of the ARF, allowing non-ASEAN countries to share the right to leadership of the Forum. In addition, the U.S. suggested that the ARF should speed up the process of mechanism establishment, and expand its CBMs to the level of preventative diplomacy as soon as possible.⁴⁴

The U.S. has also been holding joint military exercises with Southeast Asian countries. The main purposes of the exercises are

41. "Vietnam to Continue to Control Cam Ranh Bay, Khai Says," *Japan Policy & Politics*, June 11, 2001.

42. This view was taken in particular by Chinese scholars who closely observe the development of the situation in the SCS.

43. See Joint Press Statement 15th ASEAN-US Dialogue, Kuala Lumpur, Malaysia, May 24-25, 2000.

44. See Intervention at the Seventh ASEAN Regional Forum by Strobe Talbott, Deputy Secretary of State, July 27, 2000, Bangkok, Thailand, available at <<http://usinfo.state.gov/regional/ea/easec/talbtarf.htm>>.

believed to be: (1) to strengthen these countries' military preparedness and ability to respond to a crisis; (2) to increase the effectiveness of collaboration; and (3) to achieve the strategic objective of restricting military expansion in the SCS by China. In February 2000 the U.S. held a joint military exercise called "Balikatan" (literally meaning shoulder to shoulder) with the Philippines.⁴⁵ In May, the U.S. held the "Cobra Gold 2000" large-scale military exercise with Thailand and Singapore.⁴⁶ The U.S. also held the Annual Cooperation Afloat Readiness and Training Military Exercises (CARAT) with Australia, Malaysia, Indonesia, Brunei and Singapore, beginning in the Philippines in June 2000 and ending in Singapore at the end of September 2000.⁴⁷ In November 2000, the U.S. Pacific Command held the Third Annual Chiefs of Defense Conference in Hawaii. Seventeen Asia-Pacific region defense chiefs attended this conference – those of Australia, Brunei, Canada, Madagascar, Japan, Malaysia, Mongolia, New Zealand, Papua New Guinea, South Korea, the Philippines, Russia, Singapore, Sri Lanka, Thailand, Tonga and the U.S. The theme of the conference was "Common Defense Challenges in the Asian-Pacific Region" and the goal was to establish better communication channels between countries in the region.⁴⁸

In March 2001, the *USS Kitty Hawk* (CV 6), for the first time, was permitted to enter Singapore's new deep draft pier at Changi Naval base. In the past, U.S. aircraft carriers could only anchor in the harbor.⁴⁹ Also in March 2001, the navies of the U.S., the Philippines, and Thailand held search-and-rescue (SAR) exercises in the SCS, off Luzon's Island's western coast, which is close to the disputed Scarborough Shoal. The exercise, called the *MARSEA Exercise 01*, was the first joint military activity by the navies of the three

45. "Update and Statement on Balikatan Military Exercises," Nuclear Free Philippines Coalition, available at <<http://www.oz.net/~vvawai/interventions/update-vfa.html>>.

46. Sgt. Marcia Triggs, "Cobra Gold 2000 Links U.S., Thai, Singaporean Forces," American Forces Information Service, News Articles, May 16, 2000, available at <<http://www.defenselink.mil/news/may2000>>.

47. "U.S. Bilateral Exercises Throughout Southeast Asia – CARAT 2000," Pacific Forum CSIS, Comparative Connections, available at <http://www.csis.org/pacfor/cc/003Qus_asean.html>.

48. "General Shelton Arrives for Defense Meeting," *Air Force Link*, available at <http://www.af.mil/news/Nov2000/n20001106_001661.shtml>.

49. "USS Kitty Hawk Battle Group Goes Pierside in Singapore," U.S. 7th Fleet, available at <<http://www.c7f.navy.mil/news/2001/04/03.htm>>.

countries.⁵⁰ In April 2001, the *USS Blue Ridge*, the command ship for U.S. 7th Fleet, visited Malaysia and Singapore.⁵¹ From April 26 to May 10, 2001, the U.S.-Philippine military exercises, dubbed *Balikatan 2001*, were conducted in designated areas in Luzon of the Philippines. The exercises aimed to improve the interoperability of combined joint forces and provide training in humanitarian/civic assistance operations. These joint exercises were made more important, as they marked the 50th anniversary of the MDT between the U.S. and the Philippines.⁵² In May 2001, the U.S. conducted the 20th annual *Cobra Gold* exercise with the Royal Thai navy in the waters near Pattaya, Thailand.⁵³ In June 2001, the inaugural Western Pacific Mine Countermeasures Exercise (*MCMEX 2001*) was held in Singapore, with the participation of U.S. and 13 Pacific Ocean-region countries, to discuss different ways to keep international waterways safe.⁵⁴ In June and July 2001, the U.S. also held the annual bilateral Cooperation Afloat Readiness and Training (CARAT) exercise with the Philippines, Thailand, and Singapore.⁵⁵ On August 17, 2001, more than 15,000 U.S. sailors, marines and airmen participated in a large-scale maritime training evolution known as a "passing exercise" in the SCS. The exercise included 14 vessels from the *USS Constellation* (CV 64) and *USS Carl Vinson* (CVN 70), including their accompanying cruisers, destroyers, frigates and logistic support ships. Also participating were more than 130 carrier-based

50. "U.S., Philippines, Thai Navies to Take Part in War Games," *Asian Political News*, March 19, 2001 and "China Closely Watches Trilateral War Games," *Asian Political News*, March 26, 2001

51. "7th Fleet Command Ship to Visit Malaysia, Singapore," 7th Fleet Public Affairs, posted April 8, 2001, available at <<http://www.c7f.navy.mil/news/2001/04/10.htm>>.

52. "Balikatan 2001 Kicks Off at Camp Aguinaldo," available at <<http://www.armedforces.mil.ph/balikatan/openingceremony.htm>>.

53. "Frederick Participated in Exercise Cobra Gold," USS Frederick public affairs, posted June 10, 2001, available at <<http://www.c7f.navy.mil/news/2001/06/16.htm>>.

54. The exercise included participants from Australia, China, France, India, Indonesia, Japan, Malaysia, Papua New Guinea, Russia, Singapore, South Korea, Thailand, United States and Vietnam. It is important to note that China also participated in this exercise. For more information, see "U.S. Ships in Singapore for Multilateral Mine Countermeasures Exercise," available at <<http://www.c7f.navy.mil/news/2001/06/22.htm>>.

55. "Philippine vice President Says Annual Exercise Successful," Lt. Cmdr. Jon Lundberg, CARAT public affairs, posted June 14, 2001, available at <<http://www.c7f.navy.mil/news/2001/06/25.htm>>; "U.S. Coast Guard, Thais Share Mission, Methods," Journalist 1st Class Joseph Krypel, posted June 27, 2001, available at <<http://www.c7f.navy.mil/news/2001/06/46.htm>>; and "U.S. Navy Lands in Singapore for Annual Exercise," Journalist 2nd Class Lila Washington, CARAT public affairs, posted July 3, 2001, available at <<http://www.c7f.navy.mil/news/2001/07/02.htm>>.

naval aircraft and more than 20 U.S. air force aircraft.⁵⁶ While the U.S. claimed that the main purposes for conducting this exercise were to help maintain stability and peace in the Asia-Pacific region and to ensure the exercise of freedom of navigation in the SCS, other commentators believed that it was “gunboat diplomacy” targeting China.

China has expressed its unhappiness with and opposition to the joint military exercises that the U.S. has held in the SCS with Southeast Asian nations. Beijing feels that these joint military exercises are mainly aimed at China, and thus constitute a threat to the country. China feels that the U.S. uses the ARF to interfere in the SCS issue. The U.S. uses joint military exercises to patrol the major shipping lanes in Southeast Asia. The Southeast Asian ports and airfields are also used to show off U.S. maritime power and to implement its strategic and tactical exercises aimed at specific circumstances. China also claims that the joint military exercises held between the U.S. and the Southeast Asian countries constitute a threat to the security of other countries (referring mainly to China itself), and are undermining the CBMs taken by China and the other countries involved in the sovereignty dispute over the islands in the SCS. From the perspective of China, these joint exercises make the atmosphere in the SCS tenser, and have added a new disruptive factor to the security situation in the region. While attending the 7th ARF, China’s foreign minister, Tang Jiaxuan, raised his country’s concern over the issue of joint military exercises for the first time, stating that the increase in the number of joint military exercises in the region was a negative development that was undermining efforts to build confidence in the region and was deleterious to the security and stability of the region.⁵⁷ China has also made a series of requests to the U.S., the Philippines and other countries asking that they refrain from holding joint military exercises in sensitive areas (meaning the area around or close to the Spratly Islands), and that China be notified in advance of holding of any such exercises.⁵⁸

56. “Carrier Battle Groups Hold Joint Exercise in South China Sea,” USS Constellation public affairs, posted August 27, 2001, available at <<http://www.c7f.navy.mil/news/2001/08/33.htm>>.

57. Address by Chinese Foreign Minister Tang Jiaxuan at the 7th Foreign Ministers’ Meeting of ASEAN Regional Forum (27/7/2000), Bangkok, Thailand, available at <<http://us-mirror.fmprc.gov.cn/chn/2491.html>> (in Chinese).

58. These requests are included in the Chinese version of the code of conduct in the SCS.

As far as overall U.S. Asia-Pacific security strategy is concerned, in 2000 the U.S. adopted a series of diplomatic and military measures aiming to increase its influence in the SCS and East Asia and to solidify the U.S. military presence in the Asia-Pacific region, as well as to step up its efforts to direct the maintenance of security in the region. On the diplomatic front, in March 2000, President Clinton visited India, Bangladesh and Pakistan.⁵⁹ In November of the same year, after attending the annual meeting of APEC, he took the opportunity to visit Vietnam. Most commentators took the view that the U.S. is seeking to recruit Vietnam to help contain China. Senior U.S. military personnel, including the secretary for defense, chairman of the joint chiefs of staff and the head of the U.S. Pacific Command, are frequent visitors to countries in the Asia-Pacific region. With regard to military deployment, it was reported that in August 2000 the U.S. deployed 64 cruise missiles on Guam. In September 2000, while visiting South Korea, former U.S. Secretary of Defense William S. Cohen said that there were no factors in existence that would lead to the reduction of U.S. forces in the Asia-Pacific region, and that the U.S. would continue to keep 100,000 military personnel in the region until 2005. At the end of October 2000, a senior naval officer announced that the U.S. was considering re-deploying three Los Angeles class nuclear-powered submarines from their current base in Pearl Harbor, Hawaii to a base in Guam, nearer to East Asia.⁶⁰ Overall, whether in terms of diplomacy, military affairs or security, the U.S. was very active in the Asia-Pacific region in the year 2000. This is closely related to developments in the SCS and to the settlement of the SCS issue, and warrants close attention.

It appears clearly that the newly elected president George W. Bush is following the "active neutrality" policy adopted by his predecessor. In addition, the new administration has adopted a China policy that is considered different from that of President Clinton. While China was considered a strategic partner of the U.S. under the Clinton administration, President Bush views China as a strategic competitor. In 1998, President Clinton announced the so-called

59. Alyssa Ayres and Marshall Bouton, "The Clinton Visit to South Asia: A Primer," Global Beat Issue Brief No. 57, March 15, 2000, available at <<http://www.nyu.edu/globalbeat/pubs/ib57.html>>.

60. Guo Xin Nin, "New Developments of U.S. Strategy in the Asia-Pacific," November 16, 2000, available at <<http://www.peopledaily.com.cn/GB/channel2/18/20001116/314736.html>> (in Chinese).

“three-Nos” policy, but President Bush decided to upgrade U.S.-Taiwan ties.

The Bush administration has stepped up military surveillance and information gathering along the Chinese coasts. It also conducts military exercise in response to China’s modernization of its naval and air force capabilities, as well as increasing military exercises in the Taiwan Straits area.

V. ACTIONS AND COUNTERACTIONS TAKEN BY CLAIMANTS OTHER THAN CHINA IN THE SOUTH CHINA SEA AREA

In 2000 and 2001, several actions and counteractions were taken by the claimants to bolster their respective sovereign and maritime jurisdictional claims to the disputed islands and waters in the SCS area. The Philippines continuously took action to expel or arrest the Chinese fishing vessels that were found in the disputed waters, where the Philippines claimed as its EEZs. On January 9, 2000, Philippine Defense Secretary Orlando Mercado demanded that a diplomatic protest be filed against China over the alleged intrusion of six Chinese fishing boats into the waters surrounding the Scarborough Shoal in the SCS, which are claimed by the Philippines, China, and Taiwan.⁶¹ The minister stated that, “[w]e should protest this incident because of its impact on our food security. Not only is Scarborough Shoal within our 200-mile exclusive economic zone and part of our territory, but it is also a spawning ground for our corals.”⁶² On January 25, 2000, a Philippine Navy ship chased four Chinese fishing vessels spotted in the waters near the disputed Scarborough Shoal. The growing number of Chinese fishing vessels entering the disputed waters was interpreted by the Philippines as China’s response to the unilateral actions taken by the Philippine military, which had constructed structures and hoisted the national flag on a rocky outcrop in the disputed area.⁶³ On January 26, 2000, two of the Chinese fishing vessels, anchored inside the Scarborough Shoal, were intercepted by a Philippine navy ship. The other two Chinese boats hid in a lagoon and later agreed to leave the area.⁶⁴

61. “Minister Pushes for Diplomatic Protest over China’s ‘Intrusion,’” *Muzi Lateline News*, January 9, 2000. For the news, visit <<http://lateline.muzi.net>>.

62. *Ibid.*

63. “Philippine Ship Chases 4 Chinese Fishing Vessels Near Shoal,” *Muzi Lateline News*, January 25, 2000. For the news, visit <<http://lateline.muzi.net>>.

64. “China Vows to Help Philippines Stop Illegal Fishing,” *Muzi Lateline News*, January 29, 2000. For the news, visit <<http://lateline.muzi.net>>.

On February 1, 2000, China accused the Philippines of violating its sovereignty by “forcefully boarding Chinese (fishing) ships” in the waters near the Scarborough Shoal, which it claims as Chinese territory.⁶⁵ China complained that the Philippines was interfering with Chinese fishing operations in the waters surrounding the islands that belong to China.⁶⁶ On February 29, 2000, the Philippine military sighted two Chinese fishing vessels anchored off Parola Island, a Philippine-claimed island in the disputed Spratlys in the SCS. Two other Chinese fishing vessels were also spotted by the Philippine military anchored off Lawak and Panata, the two other Philippine-claimed reefs in the Spratlys.⁶⁷

In early March 2000, the Philippine military sighted 16 Chinese fishing vessels operating in the waters near the Scarborough Shoal.⁶⁸ In April of the same year, China announced that a two-month ban on fishing in the SCS, starting June 1 and ending at noon August 1, would be imposed. Fishing within the Spratly Islands was prohibited unless a special permit was secured from the Chinese fishery bureau. Despite the clarification issued by the Chinese authority that the ban did not apply to non-Chinese fishing vessels, some Philippine diplomatic officials were concerned about the implications of the ban. They pointed out that the Chinese fishing ban in the SCS also covered the Scarborough Shoal and thus could be understood as asserting Chinese authority over Philippine-claimed territory.⁶⁹

In late April 2000, the Philippine Navy confiscated dynamite and eight tons of coral from a Chinese fishing boat near the Scarborough Shoal.⁷⁰ On May 26, 2000, the captain of a Chinese fishing boat was killed by Philippine Coast Guard officers in the waters near Palawan, a southern Philippine island. Seven crew members of the Chinese fishing vessel were arrested.⁷¹ China asked the Philip-

65. “China, Philippines at Loggerheads over Island,” *Muzi Lateline News*, February 2, 2000. For the news, visit <<http://lateline.muzi.net>>.

66. *Ibid.*

67. “Chinese Fishing Vessels Seen in Spratlys,” *Muzi Lateline News*, February 29, 2000. For the news, visit <<http://lateline.muzi.net>>.

68. “Manila Asks Beijing to Get Boats off S. China Sea,” *Muzi Lateline News*, March 13, 2000. For the news, visit <<http://lateline.muzi.net>>.

69. “China’s Fishing Ban Worries Philippine Officials,” *Muzi Lateline News*, April 9, 2000. For the news, visit <<http://lateline.muzi.net>>.

70. “Philippines Seizes Items from Chinese Boats,” *Muzi Lateline News*, April 24, 2000. For the news, visit <<http://lateline.muzi.net>>.

71. “Chinese Fisherman Killed by Philippine Coast Guard,” *Muzi Lateline News*, May 28, 2000. For the news, visit <<http://lateline.muzi.net>>.

piners to release the detained crew members and compensate the family of the Chinese fisherman. In addition, it asked the Philippines to take measures to prevent the incident from happening again.⁷² In response, however, the Philippines said that China had no basis for demanding compensation.⁷³ In March 2001, the Philippine navy boarded ten Chinese fishing vessels near the Scarborough Shoal and confiscated some fishing equipment and catches. The Philippines complained that the Chinese fishing boats had conducted fishing activities prohibited by the international community in the SCS area.⁷⁴ In September 2001, it was further reported that the Philippine Navy had arrested 48 Chinese fishermen, after having fired at one of their vessels in an area near the disputed Spratly Islands.⁷⁵

Other actions were taken by Vietnam to bolster its territorial and maritime jurisdictional claims in the SCS. In February 2001, a report appeared in an official Vietnamese newspaper (*Nhan Dan*), stating that Vietnam should set up administrative bodies on the disputed islands in the Spratlys.⁷⁶ Also in February 2001, a front-page article appeared in the Vietnamese newspaper *Lao Dong* (Labour), reporting that the Vietnam Archaeological Institute had discovered many Vietnamese ceramics from the 13th – 14th and 17th-18th centuries on Truong Sa Lon (Big Spratly) island in the SCS during excavations from 1996-2000.⁷⁷ In April 2001, Vietnam approved a plan to resettle people and build logistics bases on the disputed islands in the SCS.⁷⁸ In May 2001, Vietnam protested against China's announcement that it was marking off a forbidden sea area surrounding the Paracel Islands.⁷⁹ In June 2001, Vietnam's coastguards

72. "China 'Deeply Shocked' over Fisherman's Death," *Muzi Lateline News*, May 30, 2000. For the news, visit <<http://lateline.muzi.net>>.

73. "Philippines Rejects China Compensation Demand," *Muzi Lateline News*, May 30, 2000. For the news, visit <<http://lateline.muzi.net>>.

74. "Spokesperson on Philippine Navy Going Aboard 10 Chinese Fishing Boats Near the Huang Yan Island," Ministry of Foreign Affairs of the People's Republic of China, available at <<http://us-mirror.fmprc.gov.cn/eng/9357.html>>.

75. "Philippines Arrested 48 Chinese Fishermen," *Muzi Lateline News*, September 25, 2001. For the news, visit <<http://lateline.muzi.net>>.

76. "Vietnam Evokes Spratlys before China VP visits," *Reuters*, April 16, 2001; "China Demands Vietnam Clarify Disputed Isles Move," *Reuters*, February 13, 2001.

77. "Vietnam Says Archaeology Proves Its Spratly Claim," *Muzi Lateline News*, February 16, 2001. For the news, visit <<http://lateline.muzi.net>>.

78. "Vietnam to Push for 'Settlement' of Strategic Islands," *Agence France Presse*, April 20, 2001.

79. "Hanoi Posts Concern over Chinese Manoeuvres in the Paracels," *Agence France Presse*, May 28, 2001.

seized four Chinese fishing boats and 51 crew members caught fishing in SCS waters that are claimed by Vietnam.⁸⁰

In June 1999, it was discovered that Malaysia was constructing a two-story concrete building on Investigator Shoal in the Spratly Islands group.⁸¹ Since then, however, no reports have been seen concerning actions taken by Malaysia in 2000 and 2001 in support of its territorial claim in the SCS. As far as Taiwan is concerned, except for replacing its military troops stationed in the Pratas Islands and Taipin (Itu Aba) Island of the Spratly archipelago with coast guard personnel in early 2000, no reports of Taiwanese activities in the SCS have been seen.

VI. ACTIONS TAKEN BY CHINA IN THE SOUTH CHINA SEA IN 2000/2001

In order to meet its rapidly increasing domestic oil demands, China has imported more and more oil from international markets, in particular from the Middle East. It was estimated that China's oil imports would rise to more than eight million barrels a day by 2020, increasing China's net import dependence to around 76 percent, from about 25 percent in 2001.⁸² This growing dependence on oil imports means that China will rely increasingly on the same energy resources (the Middle East) and sea transport routes (in the SCS) shared by the U.S., Japan and other industrialized countries. As a result, it is expected that China will move to build a "blue water" navy to safeguard its energy supplies from the Middle East. In addition, the rapidly growing domestic demand for oil will push China to adopt a tougher position in the SCS, which is believed to have a large amount of oil and gas reserves. Moreover, China believes that the SCS and Taiwan issues are two of the most likely factors to cause a direct confrontation between Beijing and Washington. China now sees the U.S. as the most serious source of security threat, as well as its most important potential strategic competitor. China learned a good lesson in March 1996 when the U.S. dispatched two aircraft carrier battle groups to the Taiwan Strait area in response to Chinese missile tests conducted in the waters nearby

80. "Vietnam Seizes 51 Chinese Fishermen," *Muzi Lateline News*, June 13, 2001. For the news, visit <<http://lateline.muzi.net>>.

81. See "China Warns Malaysia Off Construction on Spratly Islands," *China Times*, June 30, 1999.

82. The figure was estimated by the International Energy Agency in Paris. See Michael Richardson, "China Developing a Navy that Could Confront U.S.," *International Herald Tribune*, January 5, 2001.

Taiwan's two largest sea ports. The lesson learned is that China has to expand its military capability as soon as possible to counter against the potential security threat from the U.S. It is also necessary for China to expand its naval capability to safeguard its oil supply, shipping, oil exploitation and exploration, strategic and geopolitics, and territorial interests in the SCS. As a result, China began to purchase more advanced warships and fighter planes from Russia, and started to construct strategic submarines and light aircraft carriers on its own. More actions were also taken by China in the SCS to bolster its sovereignty and maritime jurisdictional claims.

In February 2000, the first *Sovremenny*-class destroyer purchased from Russia was delivered to China, and the second arrived in January 2001.⁸³ It was reported that in August 2001 China test-fired two *Sunburn* supersonic missiles from the newly purchased *Sovremenny*-class destroyer, which are believed to have the capability to threaten the defenses of U.S. warships, including aircraft carriers, operating in the Asia-Pacific region.⁸⁴ China began to build its own 094 strategic nuclear-powered submarines after receiving the necessary technology from Russia.⁸⁵ In addition, China purchased *Sukhoi 27* and *Sukhoi 30* fighter planes from Russia, and signed a contract with Russia to build 200 *Sukhoi 27* in China through technology transfer.⁸⁶ Moreover, it was further reported that China began to build its own light aircraft carrier in 2001, which is expected to join the Chinese Navy in 2005. More aircraft carriers will be built every four to five years, following the completion of the first one.⁸⁷

In addition to undertaking efforts to expand its military capability, China also took action to expand its military sphere of influence in the SCS, by constructing military structures on the occupied islands, installing military weaponry such as missiles, conducting naval exercises, and strengthening naval patrolling in the disputed areas. It was reported that China had built a 350-meter pier and a 2,600-meter airstrip, capable of handling all types of PLA aircraft on Woody Island of the Paracel archipelago. Silkworm antiship cruise missiles, which have a range of some fifty-nine miles and

83. "China's Naval Expansion," *The International Institute for Strategic Studies* (U.K.), December 13, 2000, available at <<http://www.iiiss.org.uk/pub/sp/sp00028.asp>> and *China Times*, January 19, 2001, p. 11.

84. *China Times*, August 15, 2001, p. 11.

85. *United Daily*, January 7, 2001, p. 11.

86. *China Times*, December 24, 2000, p. 13.

87. *Central Daily*, November 5, 2001, p. 6; *Central Daily*, September 9, 2001, p. 7.

could be used to threaten nearby shipping traffic, have also been installed on Woody Island.⁸⁸ In May 2001, Vietnam voiced its concern over the proposed military exercises to be conducted by China in the waters adjacent to the Paracel Islands. Vietnam claimed that the Paracel Islands belong to Vietnam, but China was to ban access to the area surrounding the disputed islands from May 27 to June 3, 2001 for the military exercises.⁸⁹ In late June 2001, the *Washington Times* reported that China deployed more than a dozen warships, including destroyers, around the Spratly Islands. The report said U.S. officials speculated that China was following the same pattern it had used in occupying Mischief Reef in February 1995, first sending fishing vessels to the area, then warships. The report caused great concern to Vietnam and the Philippines,⁹⁰ but China flatly denied it.⁹¹ In September 2001, it was reported in *Jane's Defence Weekly* that China's Navy was building between 20 and 24 high speed patrolling boats, which are to be deployed into the SCS. In order to avoid being accused of stepping up its military presence in the disputed SCS area, these vessels will be transferred to the Chinese Customs authority.⁹²

During the time period 1999 - 2001, China also took action to improve its economic, political and diplomatic relations with member states of ASEAN, in particular with the three countries involved in the SCS territorial dispute, Vietnam, the Philippines, and Malaysia. Another positive development was the ongoing discussions between China and ASEAN, started in late 1999, to formulate a regional code of conduct in the SCS. The code is considered an important CBM, and could help maintain peace and stability in the SCS area. If adopted, both China and the member states of ASEAN are expected to refrain from taking actions that would escalate tensions in the SCS. The improvement in the relations be-

88. David G. Wiencek, *China Brief*, Vol. 1, Issue 2, July 24, 2001, The Jamestown Foundation, available at <http://china.jamestown.org/pubs/view/cwe_001_002_004.htm>.

89. "Hanoi Posts Concern over Chinese Manoeuvres in the Paracels," *Agence France Presse*, May 28, 2001.

90. "Manila Investigates Reported Spratlys Buildup," *Muzi News*, June 26, 2001, available at <<http://news.muzi.com/news.shtml>>; and "Vietnam Says to Check Spratlys Buildup Reports," *Muzi News*, June 27, 2001, available at <<http://news.muzi.com/news.shtml>>.

91. "China Denies Naval Activity in Spratlys," *Muzi News*, June 26, 2001, available at <<http://news.muzi.com/news.shtml>>.

92. Robert Sae-Liu, "South China Sea Patrols Boosted," *Jane's Defence Weekly*, September 20, 2001.

tween China and member states of ASEAN, and between China and the ASEAN as a group, helps explain why member states of ASEAN became silent on issues relating to the SCS disputes in 2000 and 2001.

In March 1999, a joint statement was issued after the first meeting of the Working Group on CBMs between China and the Philippines, in which the two sides reiterated their commitments to maintaining peace and stability in the region and refraining from the use or threat of force. In addition, China and the Philippines agreed to exercise self-restraint and not to take action that might escalate the situation in the SCS.⁹³ In May 2000, China and the Philippines signed a joint statement on the framework of cooperation between the two countries in the 21st century, in which,

[t]he two sides commit themselves to the maintenance of peace and stability in the South China Sea. They agree to promote a peaceful settlement of disputes through bilateral friendly consultations and negotiations in accordance with universally-recognized principles of international law, including the 1982 United Nations Convention on the Law of the Sea. They reaffirm their adherence to the 1995 joint statement between the two countries on the South China Sea and agree not to take actions that might complicate or escalate the situation. The two sides expressed their determination to follow through the work of the China-Philippine Working Group on Confidence Building Measures to enhance peace and stability in the region. They reiterate that they will contribute positively toward the formulation and adoption of the regional Code of Conduct in the South China Sea.⁹⁴

In October 2001, Philippine President Gloria Macapagal Arroyo and Chinese President Jiang Zemin met in Beijing. During the talks, the two leaders exchanged views on the SCS issues and agreed that the important relationship between the two countries should not be affected by their differences over the SCS issues. The two sides agreed to find a solution to the problem through existing bilateral channels and by peaceful means. They further agreed to

93. "China and Philippines," Ministry of Foreign Affairs of the People's Republic of China, available at <<http://us-mirror.fmprc.gov.cn/eng/4412.html>>.

94. See Joint Statement Between China and the Philippines on the "Framework of Bilateral Cooperation in the Twenty-First Century." Ministry of Foreign Affairs of the People's Republic of China, available at <<http://us-mirror.fmprc.gov.cn/eng/4035.html>>.

speed up the process of formulating the regional code of conducting in the SCS so as to help maintain stability in the area.⁹⁵

As far as China-Vietnam relations are concerned, there was also important improvement in the years 1999 to 2001. In February 1999, the General Secretaries of the Communist Party of China (CPC) and the Communist Party of Vietnam (CVC) affirmed the 16 word guiding principles in developing relations between China and Vietnam during the 21st century, namely "long-term, stable, future-oriented, good-neighborly and all-round cooperative relations."⁹⁶ In December 1999, the two countries signed the Land Border Treaty; and in December 2000, the two countries signed the Sino-Vietnamese Agreement on Demarcation of Territorial Waters, Exclusive Economic Zone and Continental Shelf in the Beibu (Tonkin) Gulf and the Agreement on Fisheries Cooperation in the Beibu Gulf.⁹⁷ In addition, the two countries signed and issued a Joint Statement on All-round Cooperation Between the People's Republic of China and the Socialist Republic of Vietnam in the New Century on December 25, 2000, in which the two sides agreed *inter alia* that

the current negotiation mechanism on maritime issues should be maintain and a fundamental and lasting solution acceptable to both sides should be sought. Prior to the solution of the issues, both sides should persist in the spirit of solving the easier issues first and the more difficult ones later and actively explore possibilities and measures for cooperation in such areas as marine environmental protection, meteorology and hydrology as well as the prevention and reduction of disaster in the ocean. In the same time, both sides will neither take any action that may complicate or expand the disputes nor resort to force of the threat of force. Timely consultations should be held whenever divergence occurs and the differences should be properly

95. For summary of the talks, visit web site of the Ministry of Foreign Affairs of the People's Republic of China at <<http://us-mirror.fmprc.gov.cn/chn/19910.html>> (in Chinese).

96. "China and Vietnam," Ministry of Foreign Affairs of the People's Republic of China, available at <<http://us-mirror.fmprc.gov.cn/eng/4471.html>>.

97. Nguyen Hong Thao, "The Settlement of Disputes in Bac Bo (Tonkin) Gulf," *Vietnam Law & Legal Forum*, January 2001, pp. 15-18.

handled in a calm and constructive manner so that the normal development of bilateral ties will not be affected.⁹⁸

During the years 2000 and 2001, there were also quite a few diplomatic activities carried out in the capitals or major cities of the two countries, between party or political leaders, aiming to promote friendly relations between China and Vietnam. For instance, on December 1, 2001, Chinese Vice President Hu Jintao and Premier Zhu Rongji met with Nong Duc Manh, General Secretary of the Central Committee of the CPV, in China's state guesthouse, the Diaoyutai, and in Zhongnanhai.⁹⁹ On November 30, 2001, Chinese President Jiang Zemin held talks with Nong Duc Manh, who was on an official friendly and goodwill visit to China, in the Great Hall of the People.¹⁰⁰ On October 19, 2001, Jiang Zemin met with Vietnamese Prime Minister Phan Van Khai in Shanghai.¹⁰¹ Between July 31 and August 6, 2001, a delegation from the National Assembly of Vietnam visited China.¹⁰² On February 26, 2001, Chinese Vice Premier Qian Qichen met with Vietnamese Deputy Prime Minister Nguyen Manh Cam, who attended the Boao Forum for Asia, held in Boao, Hainan Province, China.¹⁰³ On December 26, 2000, Chinese Premier Zhu Rongji and Chairman Li Peng of the Standing Committee of the National People's Congress each met with Vietnamese President Tran Duc Luong.¹⁰⁴ On December 25, 2000, Jiang Zemin met Tran Duc Luong, who had gone to China for an official visit.¹⁰⁵ On September 25, 2000, Zhu Rongji held talks with Phan Van Khai in Beijing.¹⁰⁶ Finally, on September 26, 2000, Jiang Zemin met with

98. For the statement, see Ministry of Foreign Affairs of the People's Republic of China, available at <<http://us-mirror.fmprc.gov.cn/eng/4471.html>>.

99. See Ministry of Foreign Affairs of the People's Republic of China, available at <<http://us-mirror.fmprc.gov.cn/eng/21956.html>> and <<http://us-mirror.fmprc.gov.cn/eng/21955.html>>.

100. See Ministry of Foreign Affairs of the People's Republic of China, available at <<http://us-mirror.fmprc.gov.cn/eng/21945.html>>.

101. See Ministry of Foreign Affairs of the People's Republic of China, available at <<http://us-mirror.fmprc.gov.cn/eng/18989.html>>.

102. See Ministry of Foreign Affairs of the People's Republic of China, available at <<http://us-mirror.fmprc.gov.cn/eng/15929.html>>.

103. See Ministry of Foreign Affairs of the People's Republic of China, available at <<http://us-mirror.fmprc.gov.cn/eng/8385.html>>.

104. See Ministry of Foreign Affairs of the People's Republic of China, available at <<http://us-mirror.fmprc.gov.cn/eng/6959.html>>.

105. See Ministry of Foreign Affairs of the People's Republic of China, available at <<http://us-mirror.fmprc.gov.cn/eng/6949.html>>.

106. See Ministry of Foreign Affairs of the People's Republic of China, available at <<http://us-mirror.fmprc.gov.cn/eng/4503.html>>.

Phan Van Khai at Zhongnaihahai.¹⁰⁷ During the visits listed above, the leaders of the two countries exchanged views on bilateral relations and issues of common concern, and pledged to enhance cooperation.

Bilateral relations between China and Malaysia also developed soundly during the years 1999 to 2001. In May 1999, for instance, Malaysian foreign minister Syed Hamid visited China. During the visit, China and Malaysia signed the Joint Statement on Framework for Future Bilateral Cooperation, in which the two sides agreed to strengthen military cooperation and to resolve territorial disputes in the SCS through peaceful means.¹⁰⁸ China and Malaysia agreed to make joint efforts to maintain peace and stability in the SCS, and to promote the settlement of disputes through bilateral friendly consultations and negotiations in accordance with universally-recognized principles of international law, including the 1982 LOSC.¹⁰⁹ High-level leaders from the two countries also exchange visits frequently, as China did with Vietnam.

Efforts were also undertaken by China to strengthen its bilateral relations with other member states of ASEAN, including Thailand, Indonesia, Singapore, Brunei, and Cambodia, in 2000 and 2001. For instance, in August 2001, Thaksin Shinawatra, Prime Minister of Thailand, was invited to visit China. During the visit, China and Thailand reiterated their full endorsement and support for the Joint Statement on the Plan of Action for the 21st Century between the People's Republic of China and the Kingdom of Thailand, signed in Bangkok on February 5, 1999. The two countries reaffirmed the significance of the Joint Statement in guiding the future development of China-Thailand relations. The two countries also indicated that they would take concrete measures to vigorously implement the various cooperation programmes outlined in the Joint Statement and further promote an all-dimensional cooperative rela-

107. See Ministry of Foreign Affairs of the People's Republic of China, available at <<http://us-mirror.fmprc.gov.cn/eng/4507.html>>.

108. "China and Malaysia Agree to Boost Defense Cooperation in the South China Sea," Alexander's Gas & Oil Connection, News and Trends, E&SE Asia, Vol. 4, No. 13, July 19, 1999, available at <http://www.gasandoil.com/goc/news/nts93001.htm>>. Also see Ministry of Foreign Affairs of the People's Republic of China, available at <<http://us-mirror.fmprc.gov.cn/eng/4387.html>>.

109. *Ibid.*, <<http://us-mirror.fmprc.gov.cn/eng/4387.html>>.

tionship of good neighborliness, mutual respect and mutual trust between China and Thailand.¹¹⁰

In recent years, there has also been rapid growth in the friendly relations and cooperation between China and ASEAN. In July 1996, China was accorded full dialogue partner status at the 29th AMM in Jakarta, Indonesia. Since then, China has participated in a series of consultative meetings with ASEAN, including the ARF, the PMC, and the ASEAN-China SOM Consultations.

At the end of 1997, Chinese President Jiang Zemin and ASEAN leaders had their first informal meeting in Malaysia and issued a joint statement, in which the two sides decided to establish a partnership of good neighborliness and mutual trust oriented toward the 21st century. Chinese Vice President Hu Jintao attended the second ASEAN-China informal leaders meeting in Hanoi in 1998. Chinese Premier Zhu Rongji attended the third, fourth, and fifth ASEAN-China informal leaders meetings held in Manila (1999), Singapore (2000), and Bandar Seri Begawan (2001).

At the Leadership Meeting between ASEAN and China (10+1) that was held in Singapore on November 25, 2000, Zhu Rongji announced that China would add a sum of US\$5 million to the ASEAN-China Cooperation Fund, which greatly facilitated the cooperation projects between the two sides.¹¹¹ In addition, the leaders of ASEAN and China agreed to look into the possibility of establishing a free trade area (FTA) between ASEAN and China. Accordingly, the Third ASEAN-China Joint Committee on Trade and Economic Cooperation was held on March 28, 2001 in Kuala Lumpur, Malaysia. It formally established the ASEAN-China Expert Group on Economic Cooperation.¹¹² In October 2001, the ASEAN-China Expert Group on Economic Cooperation submitted a report entitled "Forging Closer ASEAN-China Economic Relations in the Twenty-First Century" to the 7th ASEAN Summit. On November 6, 2001, at the ASEAN + 1 summit held in Bandar Seri Begawan, ASEAN leaders and Chinese Premier Zhu Rongji en-

110. The China-Thailand Joint Communiqué, August 29, 2001. For the text of the communiqué, visit the web site of the Ministry of Foreign Affairs of the People's Republic of China at <<http://us-mirror.fmprc.gov.cn/eng/17357.html>>.

111. See "Speech by Chinese Foreign Minister Tang Jiaxuan at the Meeting of China-ASEAN Dialogue," Hanoi, July 26, 2001, available at <<http://www.chinaembassy-indonesia.or.id/bahasa/16133.html>>.

112. See Third ASEAN-China Joint Committee on Trade and Economic Cooperation, Joint Press Statement, March 28, 2001, Kuala Lumpur, Malaysia, available at <http://www.aseansec.org/news/3rd_aschi_trade.htm>.

dorsed the proposal for a Framework on Economic Cooperation and to establish an ASEAN-China FTA within ten years. With a combined market of 1.7 billion people, a FTA between China and ASEAN would have a GDP of \$2 trillion and two-way trade of \$1.23 trillion.¹¹³

In the political field, China supports ASEAN's pursuance of the policies of peace, freedom and neutrality, and takes a positive attitude towards accession to the Treaty of Amity and Cooperation in Southeast Asia. China also supports ASEAN's effort to build a Southeast Asia Nuclear Weapon Free Zone. China hopes that ASEAN and the five nuclear states will reach agreement at an early date so as to make it possible for China to sign the Protocol of Southeast Asia Nuclear Weapon Free Zone as soon as possible. In addition, China expresses its willingness to cooperate with ASEAN to deal with non-traditional security issues, such as the fight against drug-trafficking, smuggling and illegal immigration.¹¹⁴ As to managing potential conflicts in the SCS, China and ASEAN were engaged in consultations in 1999 with a view to formulating a regional code of conduct in the SCS. New developments in the years 2000 and 2001 are discussed below.

VII. THE POSSIBILITY OF ADOPTING A REGIONAL CODE OF CONDUCT IN THE SOUTH CHINA SEA BETWEEN CHINA AND ASEAN

On March 15, 2000, China and ASEAN continued to discuss the possibility of adopting a regional code of conduct in the SCS in an informal consultations held in Hua Hin, Thailand. At the meeting, China presented the same version of the code it had drafted in October 1999 for discussion. For the ASEAN submission, in comparison with the version drafted by the Philippines on its behalf in August 1999, two major revisions can be found in the new version of the code. First, the ASEAN version now defines the disputed areas by referring specifically to the Spratlys and the Paracel Islands in the South China Sea. This revision, apparently, was made to appease Vietnam, since Hanoi has disputes with China over both the Paracel and Spratly Islands. The second major revision is that exploration and exploitation of resources in the disputed area was

113. See Press Statement by the Chairman of the 7th ASEAN Summit and the Three ASEAN + 1 Summits, November 6, 2001, Bandar Seri Begawan, available at <http://www.aseansec.org/newdata/7thsummit_ps02.htm>.

114. "Speech by Chinese Foreign Minister Tang Jiaxuan at the Meeting of China-ASEAN Dialogue," Hanoi, July 26, 2001, *supra* note 111.

deleted from the list of potential areas of cooperation included in the ASEAN version of the code. The exploration and exploitation of resources in the disputed area has always been a sensitive issue among the claimants. Quite naturally, the claimants, in particular the Philippines and Vietnam, are reluctant to enter into any joint development projects to explore and/or exploit resources in the disputed area before territorial disputes are finally resolved.

During the consultations, China and ASEAN reaffirmed their desire to have the code as a set of general guidelines for managing disputes in the SCS and developing good-neighborliness and friendly relations between China and member countries of ASEAN. The following key elements, which would be contained in the code, were identified by officials of the two sides during the discussion: the principles in the UN Charter, the Five Principles of Peaceful Co-existence, the Treaty of Amity and Cooperation in Southeast Asia, and the 1982 LOSC. In addition, the parties also agreed that the code should include a number of CBMs and certain areas of cooperation. The CBMs that could be included are: consultations and dialogues, including those among defence officials, exchange of information, humane and just treatment of each other's nationals, and no new occupation of presently uninhabited features in the SCS. The areas of cooperation that could be included are: marine environmental protection, marine scientific research, safety of navigation and communication, search and rescue operation, combating transnational crime, including but not limited to trafficking in illicit drugs and arms, and piracy. The two sides agreed that the locations, scope and modalities of cooperation in these areas should be agreed upon by the parties concerned.¹¹⁵

On April 25-26, 2000, the 6th ASEAN-China Senior Officials Consultations took place in Kuching, Sarawak, Malaysia. One of the important issues discussed at the meeting was how to advance the consultations on the Regional Code of the Conduct in the SCS.¹¹⁶ On May 26, 2000, the First Meeting of the Working Group of the ASEAN-China Senior Officials Consultations on the Code of Conduct was held in Kuala Lumpur, in which a consolidated working draft of the code was prepared for further discussion by the

115. See Press Release, ASEAN and China Held A Successful Consultation on Regional Code of Conduct in the South China Sea. For the release, visit home page of the ASEAN at <http://www.aseansec.org/news/rcc_scs.htm>.

116. 6th ASEAN-China Senior Officials Consultations, Kuching, April 25-26, 2000, press release of the Ministry of Foreign Affairs, Malaysia, April 24, 2000. For the news, visit home page of Malaysia's Ministry of Foreign Affairs at <<http://www.kln.gov.my>>.

Working Group. The foreign ministers of the ten ASEAN member countries welcomed the progress made toward the adoption of the code at the 33rd ASEAN Ministerial Meeting held in Bangkok on July 24-25, 2000.¹¹⁷ The 23 foreign ministers participating in the 7th ARF annual meeting also welcomed the on-going efforts between ASEAN and China to develop and adopt the code.¹¹⁸ It is interesting to note that although the United States considers the code of conduct negotiations between ASEAN and China to be a positive step, it suggests that “we should continue to ask ourselves whether there are other diplomatic approaches or confidence building measures that might be useful, as well.”¹¹⁹ It seems that the possibility of adopting the code had increased after the 7th ARF meeting, as it was reported that China had agreed to have a code of conduct in place before the end of the year.¹²⁰ China and ASEAN met again on August 23-25, 2000 in Dalian, China to iron out the differences. The third consultation of the ASEAN-China working group meeting on the code was held in Hanoi, Vietnam on October 11, 2000. During a regular press conference of the Chinese Ministry of Foreign Affairs, held on October 18, 2000, Foreign Ministry Spokesman Zhu Bangzao was asked about the progress of the consultations on the code. In response, he said that “China and ASEAN member states have enhanced understanding and expanded consensus on the ‘majority of issues’ after rounds of consultations,” and that “China has demonstrated ‘maximum sincerity and flexibility’ in the South China Sea issue and has put forward a series of constructive opinions concerning the content of the code.”¹²¹ China believed that the major barrier at the moment to finalization of the code was that “certain ASEAN members still hold different views on the ‘scope of the code’.”¹²² Vietnam and

117. See paragraph 24 of the Joint Communique of the Thirty Third ASEAN Ministerial Meeting, Bangkok, Thailand, July 24-25, 2000. For the document, visit ASEAN’s home page at <<http://aseansec.org/amm/pramm33.htm>>.

118. See paragraph 19 of the Chairman’s Statement, the Seventh Meeting of the ASEAN Regional Forum, Bangkok, July 27, 2000. For the document, visit ASEAN’s home page at <http://aseansec.org/amm/pol_arf7.htm>.

119. Remarks of U.S. Deputy Secretary of State Strobe Talbott made at the ARF’s 7th annual meeting. For the text of his remarks, visit U.S. Department of State’s Washington File at <<http://usinfo.state.gov>>.

120. Charmaine C. Deogracias, “China Backs Regional Code in Spratlys,” *The Manila Times* (Internet edition), August 5, 2000; and Aurea Calica, “Spratly Code Seen by Yearend,” *The Philippine Star* (Internet edition), August 5, 2000.

121. “China Calls for Early Finalization of South China Sea Code of Conduct,” available at <<http://www.chinahouston.org/news/20001017202639.html>>.

122. *Ibid.*

Malaysia are the two countries having difficulties compromising on the draft of the code. Had Vietnam and Malaysia agreed on the code's geographical scope and China on provisions related to the occupation and construction of facilities on the disputed islands in the SCS, the code could have been adopted at the Fourth ASEAN Informal Summit, held in Singapore on November 24-25, 2000. Unfortunately, no consensus was reached during the summit, making it necessary to extend the consultation and dialogue process to 2001.

Shortly before the 34th AMM and the 8th ARF, which were held in Hanoi, Vietnam from July 23rd and 24th and on July 25, 2001, respectively, the Philippines drafted a new version of the regional code of conduct in the SCS, deleting the controversial references to the geographical scope of the area covered by the code.¹²³ The move aimed at defusing opposition from Vietnam, which insisted that the Paracel Islands must be included in the scope of application of the code. In response to the Philippine amendment, Vietnamese Foreign Minister Nguyen Dy Nien stated, "[t]here are some points we have not completely agreed with each other," and that "[w]e need some more exchange of views, especially on the scope and implementation of the code of conduct."¹²⁴ China reacted to the move by promising to take a flexible approach to talks on the code, and asked Southeast Asian claimants work out their differences on the definition of the scope of the area to be covered by the code. It was reported that the scope, either being defined as the Spratlys or the SCS, would be acceptable to China.¹²⁵ At the 34th AMM, the new ASEAN version of the code of conduct in the SCS, drafted by the Philippines, was discussed. While the progress in the consultations between China and ASEAN towards the adoption of the code was welcomed and recognized by the participating foreign ministers, no consensus was reached on the code of conduct's final content.¹²⁶ In August 2001, China told the visiting Secretary-General of ASEAN, Rodolfo Severino in Beijing that China would exercise restraint in handling the disputes in the SCS, and would keep an open mind in viewing proposals for the code of con-

123. "Philippines Bends to Diluted S. China Sea Code of Conduct," *Muzi News*, July 19, 2001, available at <<http://news.muzi.com/news.shtml>>.

124. "Vietnam Stressed More Discussions on Spratlys," *Muzi News*, July 17, 2001, available at <<http://news.muzi.com/news.shtml>>.

125. "China Says Flexible on S. China Sea Conduct Talks," *Muzi News*, July 18, 2001, available at <<http://news.muzi.com/news.shtml>>.

126. "ASEAN Welcomes Progress in Proposed South China Sea Code," *Muzi News*, July 25, 2001, available at <<http://news.muzi.com/news.shtml>>.

duct.¹²⁷ As confirmed by one of the Chinese scholars who attended a seminar on the SCS issues that was held in Taiwan in November 2001, China would not raise its opposition against the inclusion of wording in the code that would require the claimants to refrain from new occupation of presently unoccupied islands, reefs, atolls, shoals, cays or other features in disputed areas in the SCS. At the 8th Foreign Ministers' meeting of the ARF, Chinese Foreign Minister Tang Jiaxuan mentioned in his speech that "[p]ositive progress has been made in consultations between China and ASEAN concerning 'the Code of Conduct in the South China Sea'."¹²⁸ On November 6, 2001, Chinese Premier Zhu Rongji stated at the 5th China-ASEAN Summit that "[i]n order to achieve a more stable situation in the South China Sea, China is ready to complete the consultations with ASEAN on the code of conduct for the South China Sea region at an early date."¹²⁹ Accordingly, the ball is now in ASEAN's court. The code of conduct in the South China Sea could possibly be adopted a year or two from now, subject to Vietnam's willingness to compromise.

The ASEAN-China regional code of conduct in the South China Sea, once adopted, could help build trust, enhance cooperation, and reduce tensions in the Spratlys/South China Sea area. However, it is naïve to expect that the adoption of the code will serve as a safety valve to prevent the claimants from taking unilateral actions or counter-actions to bolster their respective sovereignty and jurisdictional claims in the disputed area. Nor will it necessarily speed up the process of moving toward eventual resolution of all disputes in the South China Sea. In August 1995, China and the Philippines issued the Joint Statement on the South China Sea and Other Areas of Cooperation, in which the two countries agreed to abide by specific principles for a code of conduct in the disputed Spratlys area. Similarly, the Philippines and Vietnam signed a joint agreement in November 1995 that also contains "basic principles for a code of conduct in the contested areas." The two existing bilateral codes of conduct in the South China Sea failed to

127. "China Affirms Restraint in South China Sea: ASEAN Chief," *Muzi News*, August 2, 2001, available at <<http://news.muzi.com/news.shtml>>.

128. See Address by Chinese Foreign Minister Tang Jiaxuan at the 8th Foreign Ministers' Meeting of ASEAN Regional Forum, July 25, 2001, available at <<http://us-mirror.fmprc.gov.cn/eng/16580.thml>>.

129. "Working Together to Create a New Phase of China-ASEAN Cooperation – Address by Premier Zhu Rongji at 5th China-ASEAN Summit," available at <<http://us-mirror.fmprc.gov.cn/eng/21860.thml>>.

prevent China from expanding the structures built on the disputed Mischief Reef in the Spratly archipelago, the Philippines from firing at or arresting the Chinese fishing boats operating in the waters close to the disputed Scarborough Shoal, and Vietnam from firing at a Philippine airforce reconnaissance aircraft that flying over the disputed Tennent Reef (Pigeon Reef).

If potential conflicts in the disputed area are to be reduced or to be managed well enough to avoid tensions being escalated into serious armed conflicts, all of the parties concerned must faithfully observe the agreed upon principles contained in the code of conduct. However, it should be noted that the nature of a code of conduct differs from that of a treaty. A contracting party to an international treaty is obligated to abide by the terms of the treaty. In comparison, a country that agrees to a code of conduct voluntarily is not necessarily bound by the principles contained in the code, unless the principles are taken from the existing bilateral or multi-lateral treaties that have legal binding force, as explained earlier.

Another problem found in the process of formulating a regional code of conduct in the South China Sea is the exclusion of Taiwan from the dialogue process. In July 2001, a Chinese foreign ministry official said that Taiwan will not be allowed to join a code of conduct aimed at easing tensions in the disputed waters in the SCS, arguing that "Taiwan did not have diplomatic ties with any of the 10 ASEAN nations and was not a member of the security-focused ASEAN Regional Forum."¹³⁰ Nevertheless, Taiwan is one of the six parties directly involved in sovereignty and maritime jurisdictional disputes in the SCS. Coast guard personnel and marines from Taiwan are now stationed on the largest island in the Spratly island chain, Tai-pin-dao (Itu Aba). Also, China has never exercised its sovereignty or jurisdictional rights over those islands controlled and administrated by Taiwan, including the Pratas Islands and Itu Aba, since 1949 when the People's Republic of China was established. Taiwan was excluded from the process of formulating a regional code of conduct mainly because member states of ASEAN adhere to the so-called "One China" policy.

It is unlikely in the near future that the ASEAN states will negotiate with Taiwan for the purpose of adopting a similar code of conduct in the SCS. Under these circumstances, little can be done by Taiwan to press member states of ASEAN to change course. In

130. "China Rules out Taiwan as Party to South China Sea Code of Conduct," *Muzi News*, July 19, 2001, available at <<http://news.muzi.com/ll/english/1084031.shtml>>.

the past and today, Taiwan's good neighbor policy has not been met with a favorable response from member states of ASEAN. Therefore, Taiwan, one way or the other, is expected to find a way to help release itself from the frustration it experiences and the unfair treatment it receives. It should also be noted that the possibility of Taiwan taking unilateral action in the disputed area in support of its sovereignty and maritime jurisdictional claims should never be ruled out.

VIII. THE SOUTH CHINA SEA ISSUES AND REGIONAL SECURITY MECHANISMS AND DIALOGUE PROCESSES

The SCS issues have continuously been listed as one of the major topics for discussions by regional security mechanisms, in particular the AMM, PMC, and ARF. The two important informal regional dialogue processes that devote their entire discussions to SCS issues are: (1) the Indonesian-hosted Informal Workshop on Managing Potential Conflicts in the South China Sea (SCS Workshop); and (2) the South China Sea Workshop, organized by the Pacific Forum/CSIS of the U.S. and the Institute of Strategic and Development Studies (ISDS) of the Philippines. In 2000, at the AMM and ARF, the participating foreign ministers did exchange views on SCS issues. They welcomed the progress that was being made between China and ASEAN in working toward the adoption of the code of conduct in the SCS and recognized the positive contribution of the ongoing SCS Workshop. As stated in the Joint Communique of the 33rd AMM,

The Foreign Ministers, welcomed the commitment of all parties concerned to resolving disputes in the South China Sea by peaceful means in accordance with the recognized principles of international law, including the United Nations Convention on the Law of the Sea (UNCLOS), as well as to ensuring the freedom of navigation in the area. They encouraged all parties concerned to continue to exercise self-restraint in the conduct of their activities and refrain from taking any action that may disturb the peace and stability in the area. They recognized the positive contribution of the bilateral and multilateral consultations among the parties concerned at the intergovernmental level, the extensive consultations at the ASEAN-China Dialogue and the regular exchange of views in the ARF, and the ongoing Informal Workshops on Managing Poten-

tial Conflicts in the South China Sea and encouraged their continuance.¹³¹

A similar statement can be found in the Joint Communiqué of the 34th Joint Communiqué of the AMM, held in Hanoi, Vietnam, July 23-24, 2001,¹³² and the Chairman's Statement of the 7th¹³³ and 8th¹³⁴ meeting of the ARF, held in Bangkok July 27, 2000 and in Hanoi July 25, 2001 respectively. In addition, the participating foreign ministers in those meetings welcomed the ongoing efforts between ASEAN and China to develop and adopt a regional code of conduct in the SCS.

Before finishing this section, it is important to note that for the first time, the positive contributions made by the series of SCS Workshops was not mentioned in the Joint Communiqué of the 34th AMM, nor in the Chairman's statement of the 8th ARF. In fact, after the decision by the Canadian International Development Agency (CIDA) in March 2001 to terminate funding the participants to the SCS Workshop and the relevant meetings, it was believed that the momentum of the SCS Workshop process had disappeared. The important role of the process as one of the major CBMs in the SCS area was also believed to have decreased to a large extent. The CIDA contributed around US\$4,000,000 over the past ten years to support all the activities conducted under the SCS Workshop process, including convening the workshop and relevant technical, and group of expert meetings, as well as study/training programmes. One of the possible reasons for terminating the funding was the lack of concrete results arising from the workshop process. Other possible reasons include: (1) the rapid growth of friendly relations between China and member states of ASEAN, as well as between China and ASEAN; (3) the ongoing consultations between China and ASEAN on the adoption of a regional code of conduct in the SCS; and therefore (4) the decrease of the possibility of serious armed conflicts erupting in the SCS area.

131. Joint Communiqué of the Thirty third ASEAN Ministerial Meeting, Bangkok, Thailand, July 24-25, 2000, available at <<http://www.aseansec.org>>.

132. See paragraph 20 of the Joint Communiqué of the 34th ASEAN Ministerial Meeting, Hanoi, July 23-24, 2001, available at <<http://www.aseansec.org>>.

133. See paragraph 19 of the Chairman's Statement, the Seventh Meeting of the ASEAN Regional Forum, Bangkok, July 27, 2000, available at <<http://www.aseansec.org>>.

134. See paragraph 16 of the Chairman's Statement, the Eighth Meeting of the ASEAN Regional Forum, Hanoi, July 25, 2001, available at <<http://www.aseansec.org>>.

In order to solve the funding problem and discuss the continuance of the SCS Workshop process, a special meeting was held on August 6, 2001 at the Department of Foreign Affairs of Indonesia. The meeting participants reached several agreements, including:

- the Workshop activities should be continued;
- the Workshop process should continue to be conducted in an informal, unofficial and Track II nature;
- the Workshop process should continue to focus on building confidence and cooperation, while avoiding controversial, political and divisive issues;
- the Workshop format should be streamlined;
- the future funding of the Workshop process should be sought through voluntary donation from the participating authorities and NGOs, foundations, or private companies within or outside the South China Sea region;
- the Workshop process should function more as a think tank group to South China Sea matters and should develop implementable cooperative projects; and
- a Special Fund to facilitate the Workshop process should be established.¹³⁵

In March 2000, the Pacific Forum CSIS of the U.S., in cooperation with the ISDS of the Philippines, convened an informal Workshop on Confidence Building Measures in the SCS in Jakarta, immediately after the special CSCAP Seminar on Indonesia's Future Challenges.¹³⁶ The participants to the Workshop discussed possible CBMs that might apply in the SCS area to help prevent various potential triggers of conflict from being pulled. Shortly before the Workshop was convened, Shi Chunlai, Secretary-General of CSCAP-China, sent an e-mail letter to all of the CSCAP national committees, stating that China strongly opposed "any extra-regional involvement in this [SCS] issue, including the proposed workshop by the Pacific Forum CSIS and the Institute for Strategic

135. See Statement of the Special Meeting of the Workshop on Managing Potential Conflicts in the South China Sea, Jakarta, August 6, 2001.

136. The Workshop was the third in a series conducted by the Pacific Forum CSIS and ISDS. The first Workshop, entitled "Security Implications of Conflicts in the South China Sea" was held in November 1995 and the second, entitled "Promoting Trust and Confidence in Southeast Asia: Cooperation and Conflict Avoidance," was held in October 1997. See *Security Implications of Conflict in the South China Sea: Exploring Potential Triggers of Conflict*, A Pacific Forum CSIS Special Report, prepared by Ralph A. Cossa, Pacific Forum CSIS (Honolulu, Hawaii, March 1998), p. 1.

and Development Studies of the Philippines.”¹³⁷ The Secretary-General also reiterated in the letter that

the South China Sea issue can only be discussed by sovereign states concerned. Taiwan is not qualified for any involvement in the issue. CSCAP China is firmly against the practice of inviting anyone from Taiwan for such an occasion. . . . Should any such events be included in future CSCAP CBMs Working Group, it would inevitably have negative impact on China’s participation of CSCAP. CSCAP China requests [CSCAP-US] take into serious consideration of China’s position.¹³⁸

Ralph Cossa, on behalf of CSCAP-US, replied by stating that

I am deeply saddened to read your note regarding China’s position on the Pacific Forum/ISDS South China Sea Confidence Building Measures Workshop. . . . We applaud the ongoing efforts by China and the ASEAN states to solve the sensitive territorial issues and likewise applaud the efforts of the Indonesian Workshop series (which included participants from Taiwan and the Mainland). . . . Our previous studies have concluded that the implications of conflict spread well beyond the claimants themselves and many potential triggers of conflict remain. . . . It is also a fact that military forces from Taiwan today occupy territory in the South China Sea. To exclude Taiwan representatives (acting, as are all the participants, in their private capacities) from these non-governmental deliberations would be unrealistic and self-defeating. It is precisely because Taiwan representatives are excluded from government-to-government discussions that track two efforts must incorporate their views into informal non-governmental deliberations such as the Pacific Forum/ISDS Workshop series.¹³⁹

Despite the Chinese protest and the imposed threat, the Workshop was held in Jakarta from March 9 to 11, 2000, attended by 33 participants in their private capacities from the ASEAN Secretariat, Hong Kong, Australia, Canada, Indonesia, Japan, New Zealand, Norway, the Philippines, Singapore, Thailand, Taiwan, and the U.S.

137. The letter, dated March 1, 2000, on file with this author.

138. *Ibid.*

139. Ralph A. Cossa’s letter, dated March 2, 2000, on file with this author.

The fourth Workshop, entitled "CBMs in the South China Sea and Taiwan's Involvement," sponsored by the Pacific Forum CSIS and the ISDS and hosted by the Institute of International Relations, National Chengchi University, was held from April 26-29, 2001 in Taipei, Taiwan. The Workshop identified a number of CBMs to avoid accidental escalation of conflicts in the SCS, including:

- A halt to further military construction or force build-ups in disputed territories or, preferably, a return to the status quo at the time of the 1992 ASEAN Declaration on the South China Sea;
- Negotiations on a region-wide Code of Conduct to forswear the use of force and to work toward the eventual demilitarization of the disputed territories, preferably with verification and enforcement mechanisms;
- Enhanced efforts through the ongoing Indonesian Workshop process - an indispensable dialogue mechanism and a CBM in its own right - to promote data exchange and database compilation in the areas of biodiversity and hydrography;
- An annual environmental assessment of the South China Sea by private scholars, along with the development of rapid response mechanisms and spheres of responsibility among claimants to respond to oil spills or other environmental disasters;
- The eventual establishment of a marine park to preserve the unique biodiversity of the South China Sea;
- Joint development efforts that set aside issues of sovereignty and build habits of further cooperation;
- The commissioning of a non-binding report by a distinguished private group of experts on law of the sea matters to clarify how UNCLOS properly applies to conflicting maritime claims;
- Cooperation on anti-piracy efforts and the establishment of uniform international safety standards for vessels and aircraft transiting the region;
- Increased bilateral negotiations, such as the recent Sino-Vietnamese agreement on delimitation of the Gulf of Tonkin, which can serve as important first

steps toward building broader multilateral agreements.¹⁴⁰

IX. THE NEW BUSH ADMINISTRATION'S CHINA POLICY AND ACTIONS TAKEN BY THE U.S. IN THE SOUTH CHINA SEA

Prior to the inauguration of newly elected U.S. President George W. Bush in January 2001, relations between China and the U.S. had already experienced difficulties, in particular those caused by the U.S.-led NATO campaign against Yugoslavia and the bombing of the Chinese embassy in Belgrade in May 1999. The Chinese Defense White Paper, issued on October 16, 2000, illustrated China's concern that the U.S. had emerged as the major source of problems for the country's national defense and security. The U.S. was attacked as "a certain country that is still continuing its efforts to develop and introduce the national missile defense and theater missile defense systems, which have undermined the international community's efforts to stem the proliferation of weapons of mass destruction and to promote disarmament."¹⁴¹ The White Paper criticized the U.S. for seeking to enlarge military blocs, strengthening military alliances, seeking greater military superiority, "further strengthening its military presence and bilateral military in [the Asia-Pacific] region, and advocating the development of the TMD system and planning to deploy it in East Asia."¹⁴² In addition, the U.S. was accused of being the "root cause" for the escalation of tension across the Taiwan Strait through selling advanced weapons to Taiwan, including possible TMD systems, through congressional legislation such as the Taiwan Security Enhancement Act, and by strengthening the U.S.-Japan alliance in ways that could pull it into a Taiwan Strait contingency.¹⁴³ China complained that the actions cited above "have inflated the arrogance of the separatist forces in

140. Scott Snyder and Ralph A. Cossa, "Measures to Manage Potential Disputes in the South China Sea," *PacNet Newsletter* #22, June 1, 2001, available at <<http://www.csis.org/pacfor/pac0122.htm>>.

141. *China's National Defense 2000* (Beijing: Information Office of the State Council, October 2000), available at <<http://www.gertzfile.com/whitepaper.htm>>. For the Chinese version, see *People's Daily* on line at <<http://www.peopledaily.com.cn/BIG5/paper464/1691/247740.html>>.

142. *Ibid.*

143. *Ibid.*

Taiwan, seriously undermined China's sovereignty and security and imperiled the peace and stability in the Asia-Pacific region."¹⁴⁴

During the U.S. presidential campaign in November 2000, Republican candidate George W. Bush stated that "China is a competitor, not a strategic partner." He believed that the U.S. "must deal with China without ill-will but without illusions," and that "given China's poor record in honoring agreements, it will take a strong administration to hold them to their word."¹⁴⁵ After winning the election, President George W. Bush did follow the approach he had promised to take regarding his dealings with China. From the Chinese perspective, President Bush's China policy had shifted from the previous administration's constructive engagement toward containment. The United States under the new Bush administration seemed more inclined to rely on coercive measures and military deterrence in dealing with its foreign policy than on friendly consultations. As pointed out by Yong Deng,

. . . the United States has increased arms sales and political support to Taiwan, built an alliance structure along China's periphery, deployed a robust forward military presence, started to develop national and theater missile defense, maintained human rights pressure on China, insisted on imposing politically destabilizing and commercially harmful market access stipulations on China, demonized China, incited the idea of a "China threat," and obstructed China's advancement in international status.¹⁴⁶

On April 24, 2001, President Bush told the news network ABC that the U.S. government would "do whatever it took" to defend Taiwan in the event of a Chinese attack, even to the point of using U.S. troops.¹⁴⁷ While President Bush and other administration officials subsequently clarified that the remarks did not amount to a change in U.S. policy toward Taiwan, there are observers nonetheless who believed that the United States had strengthened its defense commitment to Taiwan. In the same month, the Bush administration announced its arms sales decision, offering four *Kidd*-class guided-

144. *Ibid.*

145. "Issues 2000: Foreign Policy," available at <<http://www.azcentral.com/news/election/iss-foreignpol.html>>.

146. Yong Deng, "Chinese Perceptions of U.S. Power and Strategy," *Asian Affairs: An American Review*, Vol. 28, No. 3, Fall 2001, p. 153.

147. See <<http://www11.cnn.com/2001/ALLPOLITICS/04/25/bush.taiwan.04>> for a report on Bush's remarks.

missile destroyers, eight diesel-powered submarines, 12 P-3C anti-submarine surveillance aircraft, and artillery to Taiwan. The decision was considered the most "robust" package of arms the U.S. had sold to Taiwan in years.¹⁴⁸ Chinese analysts believed that the U.S. intended to use the Taiwan issue as a trump card to contain China.¹⁴⁹

In addition to decisions to sell more advanced weapons to Taiwan, the U.S. government had also stepped up its military surveillance activities off the Chinese coasts and in the SCS area. As reported by Ralph A. Cossa of the Pacific Forum CSIS, "the U.S. now flies more than 400 reconnaissance missions a year around China – an average of over one per day."¹⁵⁰ Another Chinese expert on maritime security said that Japan-based U.S. electronic-intelligence-gathering (ELINT) aircraft have for the past year (2000) been flying about four missions per week off the Chinese coast.¹⁵¹ It was believed that the increase in U.S. military surveillance activities off the Chinese coasts and in the SCS area was an indication that the U.S. had been hunting for evidence of new and dramatic advances in Chinese submarine technology. The U.S. considered a breakthrough in this technology as posing a serious threat to America's most powerful conventional weapon, its aircraft carriers. It also demonstrated that the U.S. had been paying very special attention to Chinese efforts to upgrade its naval capabilities and to deploy missiles across the Taiwan Strait to intimidate Taiwan in recent years.¹⁵² In order to assess what kinds of defensive weapons the U.S. should offer Taiwan to help it counter the threat posed by China and ensure freedom of navigation and overflight of U.S. warships and aircraft in international waters and airspace in the Asia-Pacific region, the U.S. Pentagon conducted routine surveillance

148. Michael Swaine and James Mulvenon, *Taiwan's Foreign and Defense Policies: Features and Determinants* (Rand, 2001), p. 160.

149. See Sun Shengxia, "Objectives of US Arms Sales to Taiwan," *Liaowang*, No. 15, April 9, 2001, pp. 30-31 (in Chinese).

150. This figure was cited from media resources. Its accuracy needs to be checked. See Ralph A. Cossa, "U.S.-China Relations: the Crew's Home; Now What?" *PacNet Newsletter*, No. 15A, April 16, 2001, available at <<http://csis.org/pacfor/pac0115A.htm>>.

151. Ji Guoxing, "Rough Waters in the South China Sea: Navigation Issues and Confidence-Building Measures," *Asia Pacific Issues*, No. 53 (Honolulu: East-West Center, August 2001), p. 4.

152. See Ninan Koshy, "Looking from India at the Spy Plane," *Foreign Policy in Focus*, May 2001, A Think Tank Without Walls online at <<http://www.foreignpolicyinfocus.org>>. See also "Was America Hunting for A New Killer Submarine?" *Global Intelligence Update*, April 5, 2001, available at <<http://www.atimes.com/china/CD06Ad02.html>>.

missions around China in 2000 and increased them during the first half 2001. The increase in the number and frequency of U.S. surveillance activities off the Chinese coast gave rise to the possibility of direct confrontation between China and the U.S., since warships and fighter planes had also been sent frequently by China to monitor U.S. activities in the waters or air close to China's coast. It was reported that there were approximately 44 interceptions of U.S. surveillance and reconnaissance flights by Chinese military aircraft off its coast between December and April 2001, before the EP-3 incident occurred over the SCS on April 1, 2001.¹⁵³ Accordingly, it was believed that the EP-3 collision incident was bound to happen sooner or later.

X. THE EP-3 COLLISION INCIDENT AND ITS IMPLICATIONS FOR U.S. SOUTH CHINA SEA POLICY MAKING

On April 1, 2001, a U.S. Navy EP-3 surveillance aircraft collided with a Chinese J-8 interceptor over the SCS, some 87 miles off the coast of China's Hainan Island. The damaged U.S. aircraft issued a Mayday alarm and made an emergency landing on the nearest airfield, the Chinese military airbase Lingshui on Hainan Island. The damaged Chinese J-8 fighter jet crashed into the water, and it was later determined that the pilot, Wang Wei, had died.¹⁵⁴ China immediately charged the U.S. with responsibility for the incident, stating that

[b]y veering and ramming the Chinese jet at a wide angle in violation of the flight rules, the US surveillance [aircraft] caused the crash of the Chinese jet. The surveillance flight conducted by the US aircraft overran the scope of "free over-flight" according to international law. The move also violated the United Nations Convention on the Law of the Sea, which stipulates that any flight in airspace above another nation's exclusive economic zone should respect the rights of the country concerned. Thus, the US plane's actions posed a serious threat to the national security of China. Meanwhile, such an action was also

153. See "Secretary Rumsfeld Briefs on EP-3 Collision," Defense Link of the U.S. Department of Defense, April 13, 2001, available at <http://www.defenselink.mil/news/Apr2001/t04132001_t0413ep3.html>.

154. Elisabeth Rosenthal & David E. Sanger, "U.S. Plane in China After It Collides with Chinese Jet," *New York Times*, April 2, 2002, p. A1; John Pomfret, "U.S., Chinese Warplanes Collide Over S. China Sea," *The Washington Post*, April 2, 2001, p. A1.

against the consensus reached by the two countries in May last year [2000] on avoiding risky military actions in sea areas. According to the consensus, when military airborne vehicles encounter each other in international airspace, both sides should properly observe the current international law and practices, and take into consideration the flight safety of the other side so as to avoid dangerous approaches and possible collisions. It should also be pointed out that after the incident the US surveillance plane intrude China's airspace and landed at a Chinese airport without permission from the Chinese side., a move that further violated the regulations set forth by international and Chinese law, thus constituting a gross encroachment upon China's sovereignty and territorial airspace.¹⁵⁵

In addition to demanding an apology, China also called upon the U.S. to end its frequent reconnaissance flights off its coast.¹⁵⁶

In response, the U.S. claimed that the EP-3 was flying an overt reconnaissance and surveillance mission in international airspace, that the EP-3 was on autopilot, and did not deviate from a straight and level path until it had been hit by the Chinese jet, and that the crew of the EP-3 made some 25 to 30 attempts to broadcast *Mayday* and distress signals before landing at the Chinese airport at Ling-shui.¹⁵⁷ The U.S. blamed the Chinese pilot for having become increasingly aggressive in approaching and tailing U.S. surveillance aircraft that were on routine reconnaissance missions off the coast of China. Considering it inappropriate to apologize, the U.S. asked for the immediate return of the crew and the aircraft to the U.S.¹⁵⁸

The standoff between the U.S. and China lasted eleven days. On April 11, 2001, the U.S. ambassador to China, Joseph W. Prueher, on behalf of the U.S. government, delivered a letter to Chinese foreign minister Tang Jiaxuan, which outlined steps to resolve the incident. The letter stated, in part:

155. "FM Spokesman gives Full Account of Air Collision," Consulate General of the People's Republic of China in Houston, April 4, 2001, available at <<http://www.chinahouston.org/news/2001403202414.html>>.

156. Erik Eckholm, "China Faults U.S. in Incident; Suggests Release of Crew Hinges on Official Apology," *New York Times*, April 4, 2001, p. A1.

157. "Secretary Rumsfeld Briefs on EP-3 Collision," *supra* note 153.

158. Guy Gugliotta, "U.S. Expects Return of Plane, Crew," *The Washington Post*, April 2, 2001, p. A14 ; and David E. Sanger, "Powell Sees No Need for Apology; Bush Again Urges Return of Crew," *New York times*, April 4, 2001, p. A1.

Both President Bush and Secretary of State Powell have expressed their sincere regret over your missing pilot and aircraft. Please convey to the Chinese people and to the family of pilot Wang Wei that we are *very sorry* for their loss. [Emphasis added]

Although the full picture of what transpired is still unclear, . . . our severely crippled aircraft made an emergency landing after following international emergency procedures. We are *very sorry* the entering of China's airspace and the landing did not have verbal clearance, but very pleased the crew landed safely. We appreciate China's efforts to see to the well-being of our crew. [Emphasis added]

In view of the tragic incident and based on my discussion with your representative, we have agreed to the following actions:

Both sides agreed to hold a meeting to discuss the incident. My government understands and expects that our aircrew will be permitted to depart China as soon as possible.

The meeting would start April 18, 2001.

The meeting agenda would include discussion of the causes of the incident, possible recommendations whereby such collisions could be avoided in the future, development of a plan for prompt return of the EP-3 aircraft, and other related issues. We acknowledge your government's intention to raise U.S. reconnaissance missions near China in the meeting.¹⁵⁹

On April 12, 2001, China allowed the 24 crew members to leave Hainan Island.¹⁶⁰ The first round of talks on the EP-3 dispute between China and the U.S. were held in Beijing on April 18, 2001. After extensive negotiations, the EP-3 was dismantled and then returned to a Georgia air base on July 5.¹⁶¹ In July 2001, it was reported that China had asked for US\$1,000,000 to cover costs associated with the incident. On July 19, 2001, the House of Representatives of U.S. Congress voted to block China's demands for

159. For the full text of the letter, visit U.S. White House web site at <<http://www.whitehouse.gov/news/release/2001/04/20010411-1.html>>.

160. See Craig S. Smith, "China Release U.S. Plane Crew 11 Days After Midair Collision," *New York Times*, April 12, 2001, p. A1.

161. "Dismantled U.S. Spy Plane Arrives at Georgia Base," *Muzi Lateline* news, July 5, 2001, available at <<http://lateline.com/ll/english/1081129.shtml>>.

US\$1,000,000.¹⁶² Thereafter, the U.S. offered to pay US\$34,567 in compensation for costs relating to the emergency landing, but China rejected the offer as falling far short of the US\$1,000,000 it had requested.¹⁶³ On September 5, 2001, the U.S. and China held military maritime consultative talks in Guam, aimed at avoiding incidents such as the mid-air collision.¹⁶⁴ In 1998, the Maritime Consultative Agreement (MMCA) was signed between the U.S. secretary of defense and the Chinese minister of national defense, in which a process for conducting exchanges to strengthen maritime safety between China and the U.S. was established. The first meeting to discuss MMCA was held in China in July 1999. The second meeting was in Hawaii in June 2000, and the third was the one in Guam in September 2001. During the third MMCA meeting, the two sides agreed to maintain contacts and discussions for the proper resolution of the issues of military safety at sea.¹⁶⁵ Despite the talks, it was reported in the *Washington Times* in early December 2001 that China's military has been increasing aerial intercepts of U.S. reconnaissance aircraft flying in international airspace off the coast of China. The report said that on November 7, 2001 a Chinese interceptor jet flew alongside a U.S. Air Force RC-135 monitoring aircraft and came within 1,000 feet of the plane as it flew along the Chinese coast. In addition, it was reported in the Hong Kong *Sing Tao Jin Pao* that China practiced strikes at aircraft carriers during the large-scale military exercise, dubbed "liberation 2," conducted in November 2001 along China's coast.¹⁶⁶ Also in December 2001, it was reported in the Tokyo *Yomiuri Shimbun* that Chinese authorities have implemented a southeasterly expansion of their airspace over Hainan Island in the SCS. The report stated that the airspace includes some of the airspace over the MacClesfield Banks and Paracel Islands in the SCS, thus strengthening China's control over the area from the air. The area is centered over the Sanya radar installation on Hainan Island, which was set up in 1997. It was be-

162. "U.S. House Votes to Block Compensation to China," *Muzi Latelinews*, July 19, 2001, available at <<http://latelinews.com/ll/english/1084154.shtml>>.

163. See "U.S.-China Plane Incident Said Over," *Muzi Latelinews*, October 24, 2001, available at <<http://latelinews.com/ll/english/1099487.shtml>>.

164. "China, U.S. to Hold Military Talks in Guam," *Muzi Latelinews*, September 5, 2001, available at <<http://latelinews.com/ll/english/1093175.shtml>>.

165. "China Hails Military Talks with U.S. on Safety," *Muzi Latelinews*, September 16, 2001, available at <<http://latelinews.com/ll/english/1094487.shtml>>.

166. "Chinese Military Resumes Harassing U.S. Recon Flights; Chinese Navy Practices Attacks on US Aircraft Carriers," edited by Al Santoli, in *China Reform Monitor*, No. 418, December 10, 2001, American Foreign Policy Council.

lieved that China is pursuing a policy of “moving south through the air,” which is a part of its military modernization. In addition, transit fees paid by at least 30 commercial airlines that pass through the announced airspace will provide China with millions of dollars in annual revenue.¹⁶⁷

While the potential for direct military confrontation between the U.S. and China in the SCS areas remains, gradually there has been an adjustment in the Bush administration’s policy toward China. After the EP-3 incident, it seemed that the “State Department” view¹⁶⁸ became the main school of thought within the Bush administration, guiding the President’s foreign policy making towards China. The “Defense Department” view¹⁶⁹ increasingly became difficult to implement, mainly because of budget cuts for missile defense, greater scrutiny from the Democratic-controlled Senate, and reluctance on the part of U.S. allies to support a policy that might facilitate instability in the Asia-Pacific region by risking confrontation with China.¹⁷⁰ The EP-3 incident ended without Washington paying the money Beijing demanded. The terrorist attacks on the World Trade Center and the Pentagon on September 11, 2001 provided an opportunity for the two countries to move toward improving their diplomatic relations. In October 2001, both

167. Al Santoli ed., “Jiang Solidifies Strategic Partnership with Burma; China Expands Its Airspace over South China Sea,” *China Reform Monitor*, No. 419, December 17, 2001, American Foreign Policy Council.

168. Kenneth Lieberthal, a former Special Assistant to the President and Senior Director for Asian Affairs at the National Security Council during the Clinton Administration, broadly classified the differing views of China within the new Bush Administration into two main schools of thought, which he loosely termed the “State Department” and “Defense Department” views. The “State Department” view holds that “the U.S. should adopt a firm approach toward China while continuing to promote the benefits of engagement.” “Proponents of this view argue that China will shift its focus toward domestic issues in the near future and will not aggressively work to undermine the United States. Thus, the main task at hand is to understand the relationships between China and the U.S. and establish cooperation.” See “The Bush Administration’s China Policy a Discussion with Kenneth Lieberthal,” The Nixon Center, Washington, D.C., July 26, 2001, available at <<http://www.nixoncenter.org/Program%20Briefs/vol7no161lieberthal.htm>>.

169. This view takes a much more pessimistic view of U.S.-China relations and is more ally-centered. Advocates of this view argue that the U.S. should seek to limit military-to-military contacts by insisting on greater reciprocity on Beijing’s part. They also support strengthening the U.S. security relationship with Japan, building military ties with India, making national and theater missile defenses the ‘first principle and first priority’ of foreign policy towards China, and ‘do[ing] everything [the U.S.] can to protect Taiwan. *Ibid.*

170. *Ibid.*

President Bush and Secretary Powell went to Shanghai, China to attend the APEC meeting, where the President called Chinese President Jiang Zemin a “close ally,”¹⁷¹ and the secretary stated that U.S.-China relations are “very good,” and that the EP-3 incident had become a matter of remote memory.¹⁷² On December 27, 2001, President Bush granted China permanent normal trade (PNTR) status.¹⁷³

171. “A Review of Sino-American Relations,” *Muzi News*, December 29, 2001, available at <<http://latelinenews.com>> (in Chinese).

172. “Powell Claims Sino-American Relations Very Good,” *Muzi News*, October 19, 2001, available at <<http://latelinenews.com/ll/fanti/1098885.shtml>> (in Chinese).

173. “Text of Bush Proclamation on China PNTR,” *Muzi Latelinenews*, December 27, 2001, available at <<http://latelinenews.com/ll/english/1108213.shtml>>.

CONCLUSION

At the ASEAN Regional Forum (ARF) Press Conference, held in Singapore on July 25, 1999, U.S. Secretary of State Madeleine Albright expressed concern about rising tensions over competing territorial claims in the SCS. She stated that the United States “will be urging nations in the region to exercise restraint and to explore ways to build confidence and move towards a peaceful resolution of this situation.”¹ The next day, Albright said at the sixth ARF annual meeting that “[a]long with many countries, the United States is increasingly concerned about rising tensions in the SCS.”² She accordingly urged all of the countries in the region to “find diplomatic approaches, identify confidence building measures, and take other concrete steps to stabilize the situation and make a peaceful resolution in the area more likely.”³ On January 7, 2000, Stanley Roth, Assistant Secretary of State for East Asian and Pacific Affairs, told reporters in a media interview, “while the SCS represents an area of growing tension with four countries⁴ building facilities on islets under dispute, the threat is more from the potential flash points such facilities represent than from any capability of the facilities themselves.”⁵

Since the late 1980s, the U.S. has been involved in efforts to find a solution to the sovereignty and maritime jurisdictional disputes in the Spratly Islands and the SCS, though the efforts have been criticized for being indirect and too passive. Washington supports the 1992 ASEAN Declaration on the SCS, the Indonesian-sponsored Workshop on Managing Potential Conflicts in the SCS and the regional multilateral security dialogue processes, such as the ASEAN Ministerial Meeting/Post Ministerial Conference, the

1. For transcript of the speech, visit U.S. Department of State, International Information Programs' home page Washington File at <<http://www.usia.gov/products/washfile.htm>>.

2. For transcript of Albright Intervention at Sixth ASEAN Regional Forum, see “Security Challenges Confronting the Asia-Pacific Region,” in *U.S. Department of State Dispatch*, August/September 1999, pp. 3-6.

3. *Ibid.*, p. 4.

4. The four countries are China, Vietnam, the Philippines, and Malaysia.

5. For a report on the content of the media interview done at the Washington Foreign Press Center on January 7, 2000, visit U.S. Department of State, International Information Programs' home page Washington File at <<http://www.usia.gov/products/washfile.htm>>.

ARF, the CSCAP, and others. The United States also urges peaceful settlement of the dispute by the countries involved, in a manner that enhances regional peace, prosperity, and security. It strongly opposes the threat or use of military force to assert any nation's claim to SCS territories and has stated that it would view any such use as a serious matter.

While the majority of the littoral countries in the SCS welcome a continued U.S. military presence in the region as well as U.S. involvement in the SCS disputes, the countries directly involved in the disputes, particularly China and Malaysia, oppose the idea of involving the U.S. in the matter concerned. The solidarity of ASEAN was further jeopardized by different points of view expressed and insisted upon by member countries with respect to the question of what is the best approach in response to Chinese behavior in the Spratlys/SCS area. While no one denies that the United States is indeed the most important and influential power in the Asia-Pacific region, there are still serious debates over the question of whether Washington should be asked to play a more direct or active role in helping manage potential conflicts in the SCS.

Having said so, it is worth noting the message sent by former U.S. Assistant Secretary of State for East Asia and the Pacific, Winston Lord, in his two-week tour of Asia in May 1995. The Assistant Secretary warned the ASEAN not to leave the U.S. out of discussions with China on the disputed Spratly Islands issues. He also said, "[t]he United States establishes the principle that the issue has to be treated multilaterally."⁶ Secretary Albright also pointed out at the sixth ARF that "[a]ll members of the ARF have an interest in peace and stability in the SCS."⁷ She therefore urged all members of the ARF to support and implement the new maritime CBMs. She also said that the United States supports the idea of establishing a "good offices" role for the ARF Chair, so that ARF parties to a dispute could call on the Chair for assistance.⁸ In August 1999, Stanley Roth stated at the Australia National Press Club that a regional organization, such as the ASEAN or the ARF, is "a confidence building measure at a minimum and a vehicle for promoting

6. "Lord Tells Asian States not to Discuss Spratly Islands without U.S.," *Deutsche Presse-Agentur*, May 26, 1995.

7. *Supra* note 2, p. 4.

8. *Ibid.*, p. 5.

peace and stability over the longer term.”⁹ The United States, indeed, is a strong supporter of the ARF and other regional and sub-regional dialogues that aim at resolving or preventing conflicts in the SCS.

Unfortunately, as the world has entered a new millennium, disputes in the Spratlys/SCS area persist. Actions and counter-actions taken by the claimant countries in bolstering their respective sovereignty and maritime jurisdictional claims continue. For instance, on February 2, 2000, it was reported that a Philippine naval vessel fired warning shots at two Chinese fishing vessels, which had entered into and fished in the waters near the disputed Scarborough Shoal between China and the Philippines in the SCS. Manila filed a diplomatic protest with Beijing immediately, asking China to restraint its fishermen from entering the Philippine claimed waters. In response, China dismissed the protests, asserting that the shoal is historically China’s territory.¹⁰

For the United States, the sovereignty and maritime jurisdictional disputes in the SCS and their potential impact on peace and stability in the Asia-Pacific region remain a major policy concern. As noted earlier, on January 7, 2000, Stanley Roth expressed the U.S. government’s concern over the SCS issues in a media interview given at the Washington Foreign Press Center.¹¹ At the same time, the Clinton administration continued to stress the importance of engaging Beijing in international affairs and enhancing U.S.-China relations to help maintain peace and stability, as well as further U.S. national interests in the Asia-Pacific region. On January 27, 2000, Walter Slocombe, U.S. Under Secretary of Defense, announced that the United States and China had agreed to resume military-to-military contacts. The two countries, accordingly, were to begin implementing a series of CBMs, including a visit to China in spring 2000 by the U.S. commander-in-chief of the Pacific, Navy Admiral Dennis Blair, and a visit by Secretary of Defense William Cohen some time afterward.¹² On February 8, 2000, the *U.S. Stennis* battle

9. For the text of the speech, visit U.S. Department of State, International Information Programs’ home page Washington File at <<http://www.usia.gov/products/washfile.htm>>.

10. “Philippines Asks China to Restrain Fishermen,” *Reuters*, February 5, 2000.

11. *Supra* note 5.

12. U.S. Under Secretary of Defense Walter Slocombe discussed U.S.-China military contacts at the Department of Defense’s News Briefing on January 27, 2000. For the transcript of the briefing, visit U.S. Department of State’s Washington File home page at <<http://www.usia.gov>>.

group, including seven ships, two submarines and 71 aircraft, docked in Hong Kong, the biggest such port call since the suspension of port calls of U.S. naval vessels to Chinese harbors in late 1997.¹³

Despite the fact that the United States and China are moving closer in their bilateral relationship, particularly in the realm of military cooperation, it should be noted that a U.S.-Philippine combined joint military exercise was conducted in the Philippines' territory since the end of January 2000 and lasted until March 3 of the same year. The purpose of "Exercise Balikatan 2000" was to improve the U.S.-Philippine combined planning, combat readiness, and interoperability for a wide range of operations from humanitarian assistance to peace keeping operations. The exercise was also held for the purpose of enhancing security relations between Washington and Manila, and demonstrating the U.S. commitment to support the Philippines against external aggression through training in joint/combined operations and conduct of other related activities consistent with the 1951 MDT and the 1998 VFA.¹⁴

One of the most interesting recent developments in relation to U.S. involvement in the SCS has been the U.S. Pacific Forum CSIS's¹⁵ hosting an informal Workshop on Confidence Building Measures in the SCS, held in Jakarta, Indonesia on March 9-11, 2000.¹⁶ This workshop is the third in a series conducted by the Pacific Forum CSIS and the Philippines' Institute for Strategic and Development Studies (ISDS) since 1995.¹⁷ The first workshop addressed the security implications of conflict in the SCS and the second investigated potential triggers of conflict in the same area.¹⁸ The third workshop, held in March 2000, discussed possible CBMs that might apply in the Spratlys/SCS area. It is recalled that the U.S.

13. "US Sailors Take Leave in Hong Kong," *Associated Press*, February 8, 2000.

14. "RP-US Exercise Balikatan 2000," visit USPACOM (Commander In Chief, U.S. Pacific Command) home page at <http://usarpac.army.mil/docs/Balikatan00/BK_news_1.htm>.

15. Based in Honolulu, Hawaii, the Pacific Forum CSIS is a non-profit, private, public research institute which operates as the Asia-Pacific arm of the Center for Strategic and International Studies of Washington, D.C.

16. A letter of invitation sent by the Pacific Forum CSIS to all CSCAP member committees on February 3, 2000 is on file with this writer.

17. The Institute is located in Manila, Philippines and is a member committee of the CSCAP.

18. For reports on the two workshops, see *Security Implications of Conflict in the SCS: Exploring Potential Triggers of Conflict*, a special report prepared by Ralph A. Cossa, Executive Director of the Pacific Forum CSIS, March 1998.

Defense Department did propose to hold a SCS conference in January 1999, in which the claimant and non-claimant countries such as the United States could participate and exchange views on the SCS issues. This proposal was opposed vigorously by China, Malaysia, and Vietnam, the three major claimants to the dispute. On March 11, 1999, however, an informal workshop on the Spratlys/SCS was held at the Center for Naval Analysis in Washington, D.C., attended by about two dozen officials and analysts.¹⁹

In Chapters II-VI, the major policy-input variables, conversion processes, policy outputs, and policy outcomes of U.S. policy-making in relation to the SCS issues have been examined in detail. Now, taking note of the most recent developments in the SCS and the development of the Bush administration's China policy at the very beginning of the year 2001, it becomes possible to reach some conclusions. In this concluding chapter, an account of the current status of the official U.S. position on the sovereignty and maritime jurisdictional disputes in the Spratlys/SCS area will be provided. After that account, several unsolicited policy recommendations will be offered.

I. SUMMARY OF CURRENT STATUS OF U.S. SOUTH CHINA SEA POLICY

Since the issuance of the comprehensive policy statement on the Spratly Islands and the SCS by the U.S. Department of State on May 10, 1995, the U.S. policy-making process in relation to the territorial disputes in the SCS has been affected by a number of developments. These include: (1) the entry into force of the 1982 LOSC and the universal application of this "Charter of the Oceans"; (2) the development of maritime legislation in the claimant countries in the SCS; (3) the development of bilateral and multilateral codes of conduct in the SCS; (4) the repeated emergence and development of potential triggers for conflicts in the area; (5) the implementation of U.S. security policy in Asia, (6) the development of U.S. policy toward China; (7) the Asian financial crisis; (8) the policies of the claimant countries toward U.S. involvement in the SCS territorial disputes; and (9) the continuation of regional efforts to find solutions for the sovereignty and maritime jurisdictional disputes in the area. The U.S. policy on the Spratly Islands and the SCS was the

19. See Michael McDevitt, "China and the SCS — A Conference Summary Report," Pacific Forum, CSIS, *PacNet Newsletter*, No. 15, April 16, 1999.

result of its response to the aforementioned developments and is summarized below.

A. Supporting Regional Multilateral Security Mechanisms

The United States supports regional and subregional dialogue processes aimed at resolving differences between and among the claimant countries to the islands in the Spratlys/SCS area. In particular, the United States gives its strong support to Track One organizations, such as the ARF, and Track II dialogue processes, particularly, the CSCAP and the Workshop on Managing Potential Conflicts in the SCS. The United States is of the opinion that the ARF should tackle the SCS issues much more actively. In addition, the United States promotes the concept of "security pluralism," defined as "a network of bilateral and multilateral relationships adding up to a resilient security framework for the region."²⁰

B. Supporting Diplomatic Approaches

The United States urges the concerned countries to find diplomatic approaches, to identify CBMs, and to take other concrete steps to stabilize the situation and make a peaceful resolution to the conflicts in the Spratlys/SCS area more likely. In this regard, the United States rejects very strongly any country taking unilateral actions to assert sovereignty over the islands in the SCS. The United States denounces the use of force or the threat of force to bolster sovereignty and/or jurisdictional claims, or to resolve the conflicting claims by the concerned countries in the area. The United States supports the adoption or formulation of a code of conduct, bilateral or multilateral, between and/or among both the claimant and non-claimant countries in the region. The United States supports the idea of establishing a "good offices" role for the ARF chairman, so that ARF members to a dispute could call on the chairman for assistance strictly on a voluntary basis. The United States supports the proposal of developing a register of experts or eminent persons among ARF participants to provide non-binding professional advice and recommendations, as well as to undertake in-depth studies commissioned by the ARF when needed. The United States is willing to assist in any way the claimant countries deem helpful.

20. The concept was suggested by Admiral Dennis C. Blair, Commander in Chief of U.S. Pacific Command, see "US Echoes Erap's Line on Spratly Row," *The Philippine Daily Inquirer*, May 23, 1999.

C. Supporting a Policy of Neutrality Regarding the Legal Merits of the Claim

The United States does not take a position on the terms of authority or ownership rights or the legal implications for the disputed islands in the Spratlys/SCS area. However, the United States does call for all claimant countries to resolve their differences in a peaceful manner consistent with international law, including the 1982 LOSC.

D. Defending U.S. National Interests

The United States views the use or threat to use force by any claimant country as a threat to its vital interests. The United States has grave concerns over maintaining peace and stability and ensuring freedom of navigation in the Spratlys/SCS area. The United States would view with serious concern any maritime claim, or restriction on maritime activity, in the SCS that was not consistent with international law, including the 1982 LOSC.

II. UNSOLICITED POLICY RECOMMENDATIONS

Territorial and maritime jurisdictional disputes in the Spratlys/SCS area have not been a high priority in U.S. foreign policy. The prospect for serious armed conflict in the area seems low. Nevertheless, it would be naïve to completely rule out the possibility of the concerned countries using force to bolster their respective sovereignty and jurisdictional claims in the SCS, as pointed out by Ralph A. Cossa.²¹

Indeed, conflicting claims and military confrontation over the islands in the Spratlys/South China have the potential to disrupt peace and stability in the Asia-Pacific region and thus adversely affect U.S. national interests in that region. Accordingly, a number of policy recommendations have been proposed by scholars in academic circuits to help mold a sound U.S. policy toward the Spratly Islands and the SCS, as noted in section six of Chapter VI. The following, however, are the unsolicited policy recommendations offered by this author as an observer of U.S. policy on the Spratlys Islands and the SCS:

- The United States should be more explicit in its public statements whenever the SCS territorial disputes are at issue;

21. Ralph A. Cossa, "Security Implications of Conflict in the SCS: Exploring Potential Triggers of Conflict," *Pacific Forum CSIS, Special Report*, March 1998, p. vi.

- The United States should express its strong support for the formulation of a regional code of conduct in the SCS;
- The United States should continue to insist on the official inclusion of the SCS issues in the agenda of regional multilateral security mechanisms, particularly the ARF and the CSCAP;
- The United States should push for a multilateral agreement on the avoidance of naval incidents at sea in the Spratlys/SCS area;
- The United States should consider the advantages and/or disadvantages arising from granting the Chinese request to observe the U.S.-Philippine joint military exercises in the area near the Spratly Islands;
- The United States should seek ways and means to enhance the role of the ARF in dealing with SCS issues, and particularly help bring about realization of the idea of establishing a "good offices" role for the ARF chairman;
- The United States should adopt a strategy of conditional engagement with China and use the U.S.-China strategic partnership to exert influence on Beijing's behavior in the Spratlys/SCS area;
- The United States should encourage China to clarify its claim to the islands and waters in the SCS, since uncertainty over China's claims complicates the efforts to find a solution to the dispute in the Spratlys/SCS area;
- The United States should consider the merits for promoting or sponsoring a serious study of the idea of joint development, as proposed by China and other claimant countries such as Taiwan since early 1990s, and its potential contribution to help defuse tensions in the Spratlys/SCS area. The United States should also encourage the concerned countries to further explore and study the feasibility of joint development or zones of cooperation, and their usefulness for advancing the countries' respective economic interests and defusing tensions in the disputed areas before the competing claims are finally resolved;
- The United States should consider the idea of supporting an independent agency under the UN system, such as the Coordinating Committee for Coastal and Offshore Geoscience Programmes in East and Southeast Asia (CCOP), to conduct a geologic study to find out the potential oil and gas resources in the SCS, particularly in the Spratly area;

- The United States should consider the necessity of finding a way to ask the International Court of Justice to get involve in the SCS territorial disputes by clarifying the legal status of those islands, atolls, reefs, shoals, cays, or banks in the SCS for the purpose of helping settle maritime delimitation and jurisdictional disputes in that area. Such a clarification could help deter the claimant countries from making excessive maritime claims or conducting illegal activities in the disputed areas to bolster their sovereignty and maritime jurisdictional claims;
- The United States should, through appropriate diplomatic channels and delicate means, encourage all claimants to prepare to make substantial compromises for the sake of preventing disputes from being escalated into serious conflicts, and encourage them to reach agreements for building mutual trust and cultivating spirit of cooperation;
- The Bush administration should design and conduct a nation-wide campaign to persuade the U.S. Senate Foreign Relations Committee to schedule hearings on the U.S. accession to the 1982 LOSC as soon as possible.

APPENDIX A

JOINT STATEMENT, REPUBLIC OF THE PHILIPPINES-PRC CONSULTATIONS ON THE SOUTH CHINA SEA AND ON OTHER AREAS OF COOPERATION, AUGUST 9-10, 1995

Delegations from the Philippines and China met in Manila on 9-10 August 1995 for consultations on the South China Sea and on other areas of cooperation.

The consultations were held in an atmosphere of cordiality and in a frank and constructive manner.

The two sides reiterated the importance they attach to their bilateral relations. They recognized that the continued prosperity of their economies depends upon the peace and stability of the region. They reaffirmed their commitment to regional peace, stability and cooperation.

Frank discussions on Mischief Reef ("Meiji Reef") were held. The two sides expressed their respective positions on the matter. They agreed to hold further consultations in order to resolve their differences. On the South China Sea issue as a whole, they exchanged views on the legal and historical bases of their respective positions.

Pending the resolution of the dispute, the two sides agreed to abide by the following principles for a code of conduct in the area:

1. Territorial disputes between the two sides should not affect the normal development of their relations. Disputes shall be settled in a peaceful and friendly manner through consultations on the basis of equality and mutual respect.
2. Efforts must be undertaken to build confidence and trust between the two parties, to enhance an atmosphere of peace and stability in the region, and to refrain from using force or threat of force to resolve disputes.
3. In the spirit of expanding common ground and narrowing differences, a gradual and progressive process of cooperation shall be adopted with a view to eventually negotiating a settlement of the bilateral disputes.
4. The two sides agree to settle their bilateral disputes in accordance with the recognized principles of international law, including the UN Convention on the Law of the Sea.
5. Both sides shall keep an open-minded attitude on the constructive initiatives and proposals of regional states to pursue multilateral cooperation in the South China Sea at the appropriate time.
6. The two sides agree to promote cooperation in fields such as protection of the marine environment, safety of navigation, prevention

of piracy, marine scientific research, disaster mitigation and control, search and rescue operations, meteorology, and maritime pollution control. They also agree that on some of the above-mentioned issues, multilateral cooperation could eventually be conducted.

7. All parties concerned shall cooperate in the protection and conservation of the marine resources of the South China Sea.
8. Disputes shall be settled by the countries directly concerned without prejudice to the freedom of navigation in the South China Sea.

In order to push the process forward, the two sides agreed to hold discussions among experts on legal issues and sustainable economic cooperation in the South China Sea. They agreed further that experts from the two countries shall hold consultations at a mutually acceptable date in order to explore the possibilities of fisheries cooperation in the disputed area. The two sides agreed on the importance of bilateral cooperative activities as useful in and of themselves, and as confidence-building measures. They are dedicated to a pragmatic approach to cooperation.

In addition to the South China Sea issue, the two sides reviewed other fields of bilateral cooperation. They emphasized the usefulness of exchanging contacts at various levels in strengthening cooperation. They noted the successful conclusion of the 18th Philippines-China Joint Trade Committee Meeting. They looked forward to concluding negotiations on the avoidance of double taxation and fiscal evasion. They noted the ratification by the Philippine side of the Bilateral Agreement on the Promotion and Mutual Protection of Investments.

The talks ended with both sides satisfied that some progress had been made in terms of substantially improving the atmosphere of relations and identifying and expanding areas of agreement by holding frank exchanges directly addressing contentious issues. They pledged to continue consultations in the same constructive spirit.

APPENDIX B

**JOINT STATEMENT
ON THE FOURTH ANNUAL BILATERAL CONSULTATIONS
BETWEEN THE SOCIALIST REPUBLIC OF VIETNAM
AND THE REPUBLIC OF PHILIPPINES**

Hanoi, 7 November 1995

1. In furtherance of the agreement between the Ministries of Foreign Affairs of the Socialist Republic of Vietnam and the Republic of the Philippines, the Fourth Vietnam-Philippines Annual Bilateral Consultations were held in the Hanoi from to 6-7 November, 1995.

2. The Vietnamese delegation was led by H. E. Mr. Vu Khoan, Deputy Foreign Minister. The Philippine delegation was led by H. E. Mr. Rodolfo C. Severino, Under-secretary of Foreign Affairs.

3. The leaders of both delegations shared the views that these consultations were helpful in enhancing the mutual understanding, friendship and cooperation between Vietnam and the Philippines.

4. The two delegations briefed each other on their respective national situations and exchanged views on bilateral, regional and international issues of mutual interest. The two delegations agreed on many issues. They reaffirmed their determination to consolidate and strengthen further the friendship and cooperation between the two countries.

5. The two delegations noted with satisfaction the excellent state of relations between Vietnam and the Philippines and the favourable developments in the South East Asia. They stressed the historic significance of the forthcoming official visit of H.E. President Le Duc Anh to the Republic of the Philippines before the end of this year. They agreed to encourage more people-to-people contacts, especially in the areas of trade and investment, science and technology, and human resource development in order to strengthen further the mutual understanding, trust and cooperation between the two countries.

6. The two sides agreed to recommend the early conclusion of an Agreement on Cooperation in Science and Technology and an Agreement on the Avoidance of Double Taxation and the Prevention of Fiscal Evasion. The two sides also agreed to update the 1978 Trade Agreement: before the end of this year and to expedite the implementation of the Agreement on Cultural Cooperation between the two countries.

7. On the territorial dispute in the South China Sea (Eastern Sea), they recalled the understanding between the leaders of the two countries on the peaceful settlement of such disputes. They reaffirmed the contents and spirit of the ASEAN Declaration on the South China Sea of 1992, which has been endorsed by many countries and organizations around the world and serves as a good basis for the prevention of conflict, the maintenance of stability, and the promotion of cooperation in the area. The Two

sides committed themselves to promote bilateral and multilateral efforts in the search for a fundamental and long-term solution to the disputes relating to sovereignty over the Spratlys. They acknowledged that the growth and development of their respective economies depend greatly on the sustained peace and stability in the region.

The two sides agreed on the following basic principles for a code of conduct in the contested areas:

- a. They shall settle all disputes relating to the Spratlys through peaceful negotiation in the spirit of friendship, equality, mutual understanding and respect.
- b. They shall solve their disputes on the basis of respect international law, including the 1982 United Nations Convention on the Law of the Sea.
- c. While endeavoring to promote negotiations for a fundamental and long-term solution to the Spratlys dispute, they shall exercise self-restraint, refrain from using force or threat of force, and desist from any act that would affect the friendship between the two countries and the stability in the region.
- d. They shall promote suitable forms of bilateral and multilateral cooperation in the fields of marine environment protection, safety of navigation, marine scientific research, meteorological data, disaster mitigation and control, search and rescue operations, prevention of piracy, and maritime pollution control.
- e. They shall cooperate in the protection and conservation of marine living resources in the Spratlys in accordance with the relevant provisions of the 1982 UN Convention on the Law of the Sea.
- f. They affirm that shipping and air traffic in the area should be respected in conformity with the principles and practice of international law.
- g. They shall continue dialogues and consultations on these principles, including ways of building confidence and trust between them, pending resolution of the disputes. They shall promote such dialogue, consultations and confidence-building measures on a multilateral as well as bilateral basis.
- h. They support a gradual and progressive process, based on certain targets and benchmarks, aimed at close cooperation in the Spratlys area and the eventual settlement of the dispute. Such cooperation shall not prejudice existing sovereignty claims.
- i. Other parties are encouraged to subscribe to the principles herein stated.

The two Delegations agreed to designate their respective experts to discuss concrete forms of cooperation in marine scientific research as an initial step towards implementation of these principles. Future consultations will also consider specific confidence-building measures.

8. With regard to the question of Vietnamese non-refugees in the Philippines, the two sides reviewed the implementation of the Compre-

hensive Plan of Action (CPA) and the Memorandum of Understanding on the Principles and Agreements Concerning the Return of Vietnamese Non-refugees from the Philippines. Aware of the termination of the CPA on 31 December 1995, they agreed to take urgent measures to implement the MOU on the orderly repatriation program, and to expedite the issuance of clearances. They reaffirmed that repatriation to the country of origin remains the only durable solution to this problem. The two sides also agreed on the urgent need to find a solution to the problem of Vietnamese nationals brought to the Philippines by the United States under the Orderly Departure Program.

9. The two sides expressed their confidence that Vietnam's admission into ASEAN would create more favourable conditions and open up more channels for cooperation between Vietnam and the Philippines, both bilaterally and multilaterally.

10. Both sides affirmed their commitment to the success of the forthcoming ASEAN Summit, which will be held in Thailand in December 1995, and expressed the hope that Southeast Asian Nuclear Weapon-Free Zone Treaty will be signed on this occasion.

11. Both delegations acknowledged the existence of non-traditional security challenges such as the large-scale movement of workers across national borders, the increase of international terrorism in the region, and the trafficking in women and children. They agreed to explore ways to address the political, economic and social implication of these challenges.

12. The delegation agreed to hold the Fifth Annual Bilateral Consultations in the Philippines in 1996, on a date to be mutually agreed upon through diplomatic channels.

13. The Philippines delegation expressed its appreciation for the warm reception and hospitality that it received from the Government of Vietnam and for the arrangements made for the consultations.

14. The consultations were held in the spirit of traditional friendship and cordiality between Vietnam and the Philippines.

FOR THE VIETNAMESE
DELEGATION

FOR THE PHILIPPINES
DELEGATION

APPENDIX C**ASEAN-CHINA CODE OF CONDUCT
IN THE SOUTH CHINA SEA
(Philippine Draft As of 16 August 1999)**

The heads of State/Heads of government of the member states of
ASEAN and the Premier of the Peoples Republic of China:

COGNIZANT of the imperative need to establish a peaceful, friendly
and harmonious environment in the South China Sea for the enhancement
of economic growth and prosperity in the region;

COMMITTED TO the spirit and principles of international law, the
Charter of United Nations, the UN Convention on the Law of the Sea, the
Treaty of Amity and Cooperation in Southeast Asia, the five Principles
of Peaceful Coexistence, and the ASEAN Declaration on the South China
Sea; and

WISHING TO FURTHER the mandate and objectives of the Hanoi
Plan of Action and the 1997 Joint Statement on ASEAN-China Coopera-
tion Towards the 21st Century:

DO HEREBY AGREE

To abide by the following regional Code of Conduct in the South
China Sea:

1. Disputes relating to sovereignty and jurisdiction in the South
China Sea shall be resolved by peaceful means, without resort to
the use of force or threat of the use of force on the basis of sover-
eign equality and mutual respect among nations, consistent with
the recognized principles of international law, including those in
the UN Convention on the Law of the Sea;
2. The Parties undertake to exercise self-restraint in the conduct of
activities in disputed areas, and to desist from any act that should
affect stability in the region;
3. Without prejudice to existing claims of sovereignty and jurisdiction
and pending peaceful resolution of disputes in areas subject to
overlapping or competing claims, the parties concerned shall seek
to find ways, in the spirit of cooperation and understanding, to
build trust and confidence between and among them, to include:
 - a. refraining from new occupation of presently unoccupied islands,
reefs, atolls, shoals, cays or other features in disputed areas;
 - b. ensuring just and humane treatment of nationals of other par-
ties concerned who are in the disputed areas;
 - c. holding dialogues and exchanges among high level defense and
military officials of the parties concerned; and,

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- d. observing transparency by voluntarily informing other parties concerned of significant policies and measures that affect the disputed areas.
- 4. Without prejudice to existing claims of sovereignty and jurisdiction, the parties concerned may explore or carry out cooperation through bilateral or multilateral agreement with respect to:
 - a. marine environmental protection;
 - b. marine scientific research;
 - c. safety of navigation and communication;
 - d. exploration and exploitation of resources;
 - e. search and rescue operations and
 - f. Combating transnational crime, including, but not limited to, trafficking and illicit drugs, pirate and armed robbery at sea, and illegal traffic in arms.
- 5. The parties concerned undertake to conduct consultations and dialogues through existing mechanisms or through modalities to be mutually agreed on by them, including regular consultations on this Code of Conduct for the purpose of promoting transparency, establishing harmony, mutual understanding and cooperation and achieving peaceful resolution or prevention of disputes among them.

Adopted this 30th day of November

APPENDIX D**CODE OF CONDUCT IN THE SOUTH CHINA SEA
(Draft of the Chinese side)**

The government of the People's Republic of China and Government of the member states of ASEAN.

REAFFIRMING their determination to considerate and develop the friendship and cooperation among Asian people, who have a similar tradition, and to establish a 21st century-oriented partnership of good-neighbourliness and mutual trust;

RECOGNIZING that permanent peace, stability and prosperity in the Southeast Asian Region serve the fundamental and long-term interest of their countries;

CONSCIOUS of their common responsibility for and firm commitment to peace, stability and prosperity in Southeast Asia;

WISHING to promote the region's economic growth and prosperity, enhance mutual friendship and cooperation among people in the region, and establish a peaceful, friendly and harmonious environment in the South-east China Sea;

DESIRING to create a favorable condition for final resolution of differences and disputes between the countries concerned; and

PROCEEDING from the objectives and principles set forth in *The 1997 Joint statement of the Meeting of the President of the People's Republic of China and the Heads of State/Government of the Member States of ASEAN*;

HAVE AGREED,

To adopt and abide by the following Code of Conduct in the South China Sea:

1. The purpose and principles of *The Charter of the United Nations*, the Five Principles of Peace Coexistence and other universally recognized principles of international law shall serve as the basic norms governing state-to state relation;
2. Explore ways for building trust and confidence and for resolving differences or disputes by peaceful means in accordance with the above principles and on the basis of equality and mutual respect;
3. Refrain from use or threat of force, or other action that may affect the good-neighborly and friendly relations among countries, and regional stability;
4. Disputes relating to the Nansha Islands shall be resolved by the sovereign states directly concerned through bilateral friendly consultations

and negotiations, in accordance with universally recognized international law, including *The 1982 UN Convention on the Law of the Sea*;

5. In order to maintain peace and stability in the region, the parties concerned shall, pending the settlement of disputes, continue to exercise self-restraint and handle their disputes and differences in a cool and constructive manner and through diplomatic channels, and refrain from taking actions that will complicate or magnify the disputes;
6. The countries concerned shall, in a spirit of “putting aside disputes and engaging in joint development”, explore or carry out cooperation in areas such as marine environmental protection, marine scientific research, safety of navigation and communication at sea, exploration and exploitation of resources, search and rescue operations, and combating transnational crimes (including but not limited to, trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms).
7. The countries concerned shall be encouraged to develop bilateral fishery cooperation, establish channels of consultation and dialogue over issues that may arise in fishing operation, and manage and resolve fishing disputes through consultation.

Refrain from use or threat of force, or taking coercive measures, such as seizure, detention or arrest, against fishing boats or other civilian vessels engaged in normal operation in the disputed areas, nor against nationals of other countries thereon. Just and humane threat shall be guaranteed to these nationals.

8. The countries concerned shall hold dialogues and exchanges of views between or among their high level defense and military officials;
9. Refrain from conducting and military exercise directed against other countries in the Nansha Islands and other adjacent waters, and from carrying any dangerous and close-in military reconnaissance. Military patrol activities in the area shall be restrained.
10. Maintain safety of international navigation in South China Sea and ensure freedom of navigation of ships and aircraft in normal passage in accordance with universally recognized international law and the relevant principles and provisions of *The UN Convention on the Law of the Sea*;
11. China and ASEAN member states are ready to continue their dialogues on the relevant issues, including this Code of the Conduct, so as to enhance transparency and promote harmony, mutual understanding and cooperation; and
12. The Parties undertake to abide by provision of this Code of Conduct and take actions consistent therewith.

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